



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 19 मार्च, 2024 / 29 फाल्गुन, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Dated the 26th September, 2022*

**No. Shram (A) 6-2/2020 (Awards) L.C. Dharamshala.**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is

pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala, H.P. on the website of Printing and Stationery Department *i.e.* “e-Gazette”:—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award / order
1.	194/16	Megh Singh	S.E.E., HPSEBL, Joginder Nagar	02-08-2023
2.	196/16	Khem Singh	S.E.E., HPSEBL, Joginder Nagar	03-08-2023
3.	50/19	Ajay Kumar	HR Manager, M/S Syska LED	03-08-2023
4.	97/20	Billo Devi	D.F.O. Joginder Nagar	04-08-2023
5.	99/20	Kanta Devi	D.F.O. Joginder Nagar	04-08-2023
6.	209/17	Jagdish Kumar	Sunil Malik, Director Kufri Fun World	04-08-2023
7.	133/16	Subhash Chand	S.E.E., HPSEBL, Joginder Nagar	04-08-2023
8.	01/22	Omkar	D.F.O. Joginder Nagar	04-08-2023
9.	51/19	Ram Kishore	M.D. M/S Terrace Pharmaceutical	05-08-2023
10.	74/20	Ashwani Kumar	Project Manager Prodigy Hydro Power Pvt. Ltd.	05-08-2023

By order,

Dr. ABHISHEK JAIN (IAS)  
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 194/2016

Date of Institution : 26-3-2016

Date of Decision : 02-8-2023

Shri Megh Singh s/o Shri Gawanu Ram, r/o Village and Post Office Gwali, Tehsil Padhar, District Mandi, H.P. . .Petitioner.

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B Limited, Joginder Nagar, District Mandi, H.P.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Vijay Kaundal, Ld. Adv.  
: Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. R. S. Rana, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Megh Singh s/o Shri Gawanu Ram, r/o Village and Post Office Gwali, Tehsil Padhar, District Mandi, H.P. w.e.f. 25.03.1999 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P., who had worked as beldar on daily wages only for 138 days during years, 1996-99 and has raised his industrial dispute after more than 13 years vide demand notice dated 02.01.2013, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 138 days during years 1996-99 and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is that his services were engaged as daily waged beldar w.e.f. 25.12.1995 by the respondent and he worked upto 24.3.1999 with interruptions and his services were terminated without any notice, inquiry etc. vide letter dated 5.3.1999 on the pretext that no work and fund was available. Workmen namely S/Sh. Prithi Chand, Subhash Chand and Safi Mohd were engaged in the year 1999 particularly in the months of June, July and October, whereas, no preference was given to the petitioner. One Piar Chand was engaged on 25.2.1999 and his services were terminated on 21.4.1999. He approached the courts and his reinstatement with 50% back wages was ordered. The respondent is alleged to have violated the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner raised the demand vide demand notice dated 2.1.2013 but reference, was declined by the appropriate Government on the ground of delay. The petitioner assailed this order by way of Writ Petition being CWP No. 164/2016 which was decided on 23.2.2016 and Government was directed to refer the matter to this court for adjudication. The petitioner in the year 2016 came to know about the fact that around 710 posts of various categories were being filled up by the respondent department, and therefore, his services were liable to be re-engaged w.e.f. 25.3.1999 with full back wages, continuity, seniority and other benefits.

3. The respondent filed reply and admitted the date of engagement of the petitioner. As per the respondent, the petitioner has worked only for 138 days till 24.3.1999 where after, he left the work at his own and abandoned the same. The petitioner was in the habit of remaining absent even in between, and he finally left the job on 24.3.1999, hence, there was no question of violation of Sections 25-F, 25-G and 25-H of the Act. The respondent prayed for dismissal of the claim.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. According to him, the work was never abandoned by him and he was rather made to believe that whenever the work was available, he shall be recalled.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 29.5.2018:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 25.03.1999 is/was improper and unjustified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled? . . . *OPP*.  
Relief.
6. I have heard learned Counsels for the parties at length and considered the material on record.
7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No. 2 : Decided accordingly

Relief : Petition is **partly allowed awarding lump sum compensation of Rs. 25,000/-** per operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issues No.1 and 2

8. Both these issues are taken together for disposal for the sake of convenience and to avoid repetition of evidence.

9. The petitioner has examined one Shri Hem Singh, an official of respondent department to prove certain documents. He has tendered on record provisional seniority list of T-Mates of Electrical Division Joginder Nagar as it stood in the year 2011 as Ext.PW1/A, seniority list of T-Mates as it stood in the year 2005 as Ext.PW1/B and mandays chart of the petitioner as Ext.PW1/C. He has tendered on record joining reports of Shri Ramesh and Satwinder as Ext.PW1/D and Ext. PW1/E. So far as, the mandays chart is concerned, it is clear that the petitioner has worked only for 138 days in between 1995 to 1999. The petitioner has thus admittedly worked for less than 240 days in the period of twelve calendar months preceding his alleged termination, and, therefore, violation of Section 25-F of the Act is not established at all.

10. The case of the petitioner is to the effect that workmen junior to him were retained and fresh hands were also engaged. He has made specific pleadings regarding this fact in para no.6 of the claim. He has named S/Sh. Prithi Chand, Subhash, Safi Mohd. and Tara Chand as the workmen engaged in between June 1999 to October 1999. The services of the petitioner were terminated in March, 1999 and therefore, these workmen were definitely engaged after the petitioner. The respondent has not denied the dates regarding engagement of all the aforesaid persons nor any document contrary to the same has been proved on the record. The only case of the respondent is to the effect that he was irregular in his work and later on he willingly abandoned the services. The plea of abandonment being a plea of fact has to be established by the respondent by leading good deal of evidence. No evidence has been led to prove that any notice was served upon the petitioner during his absence to explain the position. The petitioner has made a reference of letter served upon him dated 5.3.1999 but copy of the same has not been placed by him. He has rather placed on record copy of similar notice served upon one co-worker namely Yog Raj. It is not clear as to why copy of the letter issued in the name of the petitioner was not produced by the petitioner. The respondent, on the other hand, is silent regarding the letter dated 5.3.1999. Since the petitioner has

himself not brought on record such letter, therefore, nothing can be said about the same and court has to examine the plea of abandonment as taken by the respondent. As said hereinabove, no notice was served upon the petitioner asking him to join the duties and no inquiry was conducted into the reasons of his absence. No findings were given in any inquiry to the effect that petitioner has abandoned the work, hence, the plea of abandonment is not established. It is very much clear from para no.6 of the pleadings of the petitioner which have been reproduced in the affidavit Ext.PW2/A that workmen namely S/Sh. Prithi Chand, Subhash Chand, Safi Mohd. and Tara Chand were engaged after the services of the petitioner stood terminated. This being the position, there is a clear cut violation of Section 25-H of the Act as petitioner was entitled for priority in the matter of re-engagement. When fresh hands were being engaged petitioner should have been given the priority. Since the petitioner was not given any priority, therefore, violation of Section 25-H of the Act took place in the matter. There is no cross-examination upon the petitioner regarding the contents of para no.6 of the affidavit. It is not put to him that these workmen were not engaged against the dates shown by him therefore, this evidence can not be ignored. Moreover Er. Gaurav Sharma in his affidavit Ext.RW1/A has also not said anything about the workmen shown in para no.6 of the affidavit of petitioner. The affidavit has been written on speculations and it is not on the definite plea. It is stated in the affidavit that the petitioner might have left the services with the passage of time or he might have been shunt out by the employer. Thus the respondent is not clear itself whether petitioner has abandoned the services or he was shunt out by the department. In case, this affidavit is examined the plea of the petitioner that his services were terminated by the respondent by way of letter can not be ruled out. In case, any such letter was served upon the petitioner which he although has not produced on record, yet it was the duty of the respondent to call him back whenever the work was available. Since, the petitioner was never called, therefore, violation of Section 25-H of the Act has taken place in this case and petitioner has a case in his favour. The petitioner has not stated specifically either in the affidavit or in the claim as to who are those workmen junior to him, who have been retained by the respondent at the time of termination of his services. The petitioner has got the seniority list of similar situated employees proved on the record Ext.PW1/A. A careful perusal of this list shows that it pertains to the year 2011. It is also clear that several workmen were engaged in between 1995 to 1999 and they were still working in the year 2011 and for this reason their names have been mentioned upto 2011. It shows that when the petitioner's services were terminated junior were retained. Otherwise also, it was duty of the respondent to call the petitioner back when he was absenting himself and it was the duty of the respondent to have apprised the petitioner about the fact that workmen junior to him were still working and therefore, a valuable right of first come last go already existed in his favour. Since nothing like this was done by the respondent, the plea of abandonment is not proved and failure of the plea of abandonment proves the plea of termination automatically. There is nothing in the cross-examination of the petitioner (PW2) to show that he has himself abandoned the services. There is nothing in the affidavit of Er. Gaurav Sharma (RW1) to prove that the petitioner has abandoned the services. The affidavit, as aforesaid, is based upon speculations and can not help the respondent in any manner.

11. Thus violation of Section 25-H is fully established in this case. It is admitted on the record that petitioner has raised the issue after more than 13 years and thus he kept sleeping of his valuable rights for a long period. The appropriate Government has also sought adjudication upon the delay of 13 years and therefore, it is duty of this court to adjudicate this plea. The petitioner knew right from the day of his termination that workmen junior to him were being retained and fresh hands were engaged in the year 1999 itself. Cause of action thus has accrued to the petitioner in the year 1999 itself. The petitioner, however, remained in slumber for more than 13 years and raised the demand for the first time in the year 2013 and he has thus failed to explain the delay satisfactorily. Much water has flown under the bridge and all these workmen who were junior to him has been regularized with the passage of time for the reasons that they continued the work and ultimately they came in the zone of regularization. The petitioner remained absented and did not

raise the demand on time and therefore, he can not get equal treatment with those who have actually work hard and obtained the status of regularization by dint of their hard work. The petitioner is entitled relief of compensation for the wrong done to him and in lieu of reinstatement and all other benefits. The law is well settled to the effect that when there is long delay in approaching the court, the reinstatement is not the remedy but the workman can be compensated in terms of money. Thus taking into account, the number of days for which the petitioner has worked and the delay in approaching the court, the ends of justice shall be met, in case, the respondent is directed to pay compensation in lump sum in lieu of reinstatement and other benefits to the tune of Rs.25,000/- (Rupees Twenty Five Thousand Only). The petition is maintainable for the reason that it has been filed in support of the reference. Hence both these issues are decided accordingly.

#### RELIEF

12. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 13 years and his claim for reinstatement has thus been vitiated by delay and laches, hence, reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹25,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 2nd day of August, 2023

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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#### IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 196/2016  
Date of Institution : 26-3-2016  
Date of Decision : 03-8-2023

Shri Khem Singh s/o Shri Tek Chand, r/o Village Badwahan, P.O. Urla, Tehsil Padhar, District Mandi, H.P. . .Petitioner .

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B Limited, Joginder Nagar, District Mandi, H.P.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Vijay Kaundal, Ld. Adv.  
: Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether alleged termination of services of Shri Khem Singh s/o Shri Tek Chand, r/o Village Badwahan, P.O. Urla, Tehsil Padhar, District Mandi, H.P. w.e.f. 25.03.1999 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Joginder Nagar, District Mandi, H.P., who had worked as beldar on daily wages only for 78 days during year, 1998-99 and has raised his industrial dispute after more than 13 years vide demand notice dated 27.12.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 78 days during year, 1998-1999 and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is that his services were engaged as daily waged beldar w.e.f. 25.12.1998 by the respondent and he worked upto 24.3.1999 with interruptions and his services were terminated without any notice, inquiry etc. vide letter dated 5.3.1999 on the pretext that no work and fund was available. Workmen namely S/Sh. Prithi Chand, Subhash Chand, Safi Mohd and Tara Chand were engaged in the year 1999 particularly in the months of June, July and October, whereas, no preference was given to the petitioner. One Piar Chand was engaged on 25.2.1999 and his services were terminated on 21.4.1999. He approached the courts and his reinstatement with 50% back wages was ordered. The respondent is alleged to have violated the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner raised the demand vide demand notice dated 27.12.2012 but reference, was declined by the appropriate Government on the ground of delay. The petitioner assailed this order by way of Writ Petition being CWP No. 116/2016 which was decided on 22.2.2016 and Government was directed to refer the matter to this court for adjudication. On these fact and circumstances, it is submitted that the services of the petitioner be directed to be re-engaged w.e.f. 25.3.1999 with full back wages, continuity, seniority and other benefits.

3. The respondent filed reply and admitted the date of engagement of the petitioner. As per the respondent, the petitioner has worked only for 78 days till 24.3.1999 where after, he left the work at his own and abandoned the same. The petitioner was in the habit of remaining absent even in between, and he finally left the job on 24.3.1999, hence, there was no question of violation of Sections 25-F, 25-G and 25-H of the Act. The respondent prayed for dismissal of the claim.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. According to him, the work was never abandoned by him and he was rather made to believe that whenever the work was available, he shall be recalled.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 29.5.2018:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 25.03.1999 is/was improper and unjustified as alleged? . . . *OPP*.
2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled? . . . *OPP*.  
Relief.
6. I have heard learned Counsels for the parties at length and considered the material on record.
7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No. 2 : Decided accordingly

Relief : Petition is **partly allowed awarding lump sum compensation Rs. 25,000/-** per operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issues No.1 and 2

8. Both these issues are taken together for disposal for the sake of convenience and to avoid repetition of evidence.

9. The petitioner has examined one Shri Hem Singh, an official of respondent department to prove certain documents. He has tendered on record provisional seniority list of T-Mates of Electrical Division Joginder Nagar as it stood in the year 2011 as Ext.PW1/A, seniority list of T-Mates as it stood in the year 2005 as Ext.PW1/B and mandays chart of the petitioner as Ext.PW1/C. He has tendered on record joining reports of Shri Ramesh and Satwinder as Ext.PW1/D and Ext. PW1/E. So far as, the mandays chart is concerned, it is clear that the petitioner has worked only for 78 days in between 1998 to 1999. The petitioner has thus admittedly worked for less than 240 days in the period of twelve calendar months preceding his alleged termination, and, therefore, violation of Section 25-F of the Act is not established at all.

10. The case of the petitioner is to the effect that workmen junior to him were retained and fresh hands were also engaged. He has made specific pleadings regarding this fact in para no.6 of the claim. He has named S/Sh. Prithi Chand, Subhash, Safi Mohd. and Tara Chand as the workmen engaged in between June 1999 to October 1999. The services of the petitioner were terminated in March, 1999 and therefore, these workmen were definitely engaged after the petitioner. The respondent has not denied the dates regarding engagement of all the aforesaid persons nor any document contrary to the same has been proved on the record. The only case of the respondent is to the effect that he was irregular in his work and later on he willingly abandoned the services. The plea of abandonment being a plea of fact has to be established by the respondent by leading good deal of evidence. No evidence has been led to prove that any notice was served upon the petitioner during his absence to explain the position. The petitioner has made a reference of letter served upon him dated 5.3.1999. The copy of the same has been placed by him as Ext. PA during his cross-examination. Though the original document has not been brought on the record by the petitioner, yet the respondent has also not doubted its correctness. There is no cross-examination on this witness to the effect that it is a forged document prepared by him. This document has been signed



by the Officer of the department and it also carries the office number of the respondent office on the top of the same. The respondent could have examined the diary/dispatch register of that particular period and clarified the things. No effort was made to do so. It shows that this letter was actually handed over to the petitioner. This letter shows that the petitioner has not abandoned the services of the respondent but his services were terminated w.e.f 25. 03.1999 on the ground that the department was not able to provide the work to the petitioner at that point of time and he will be informed in the next year as and when the work was available and his seniority shall be taken into account at that time. This document is thus very material and rules out the plea of the respondent to the effect that the petitioner has himself abandoned the work. Otherwise also, no findings were given in any inquiry to the effect that petitioner has abandoned the work, hence, the plea of abandonment is not established. It is very much clear from para no.6 of the pleadings of the petitioner which have been reproduced in the affidavit Ext.PW2/A that workmen namely S/Sh. Prithi Chand, Subhash Chand, Safi Mohd. and Tara Chand were engaged after the services of the petitioner stood terminated. This being the position, there is a clear cut violation of Section 25-H of the Act as petitioner was entitled to priority in the matter of re-engagement. When fresh hands were being engaged petitioner should have been given the priority. Since the petitioner was not given any priority, therefore, violation of Section 25-H of the Act took place in the matter. There is no cross-examination upon the petitioner regarding the contents of para no.6 of the affidavit. It is not put to him that these workmen were not engaged against the dates shown by him therefore, this evidence can not be ignored. Moreover Er. Gaurav Sharma in his affidavit Ext.RW1/A has also not said anything about the workmen shown in para no.6 of the affidavit of petitioner. The affidavit has been written on speculations and it is not on the definite plea. It is stated in the affidavit that the petitioner might have left the services with the passage of time or he might have been shunt out by the employer. Thus the respondent is not clear itself whether petitioner has abandoned the services or he was shunt out by the department. In case, this affidavit is examined the plea of the petitioner that his services were terminated by the respondent by way of letter can not be ruled out. Once the letter was served upon the petitioner, it was the duty of the respondent to call him back whenever the work was available. Since, the petitioner was never called, therefore, violation of Section 25-H of the Act has taken place in this case and petitioner has a case in his favour. The petitioner has although not stated specifically either in the affidavit or in the claim as to who are those workmen junior to him, who have been retained by the respondent at the time of termination of his services yet he has got the seniority list of similar situated employees proved on the record Ext.PW1/A. A careful perusal of this list shows that it pertains to the year 2011. It is also clear that several workmen were engaged in between 1995 to 1999 and they were still working in the year 2011 and for this reason their names have been mentioned upto 2011. It shows that when the petitioner's services were terminated junior were retained. Otherwise also, it was duty of the respondent to call the petitioner back when he was absenting himself and it was the duty of the respondent to have apprised the petitioner about the fact that workmen junior to him were still working and therefore, a valuable right of first come last go already existed in his favour. Since nothing like this was done by the respondent, the plea of abandonment is not proved and failure of the plea of abandonment proves the plea of termination automatically. There is nothing in the cross-examination of the petitioner (PW2) to show that he has himself abandoned the services. There is nothing in the affidavit of Er. Gaurav Sharma (RW1) to prove that the petitioner has abandoned the services. The affidavit, as aforesaid, is based upon speculations and can not help the respondent in any manner.

11. Thus violation of Section of 25 G & 25-H is fully established in this case. It is admitted on the record that petitioner has raised the issue after more than 13 years and thus he kept sleeping of his valuable rights for a long period. The appropriate Government has also sought adjudication upon the delay of 13 years and therefore, it is duty of this court to adjudicate this plea. The petitioner knew right from the day of his termination that workmen junior to him were being retained and fresh hands were engaged in the year 1999 itself. Cause of action thus has accrued to the petitioner in the year 1999 itself. The petitioner, however, remained in slumber for more than

13 years and raised the demand for the first time in the year 2013 and he has thus failed to explain the delay satisfactorily. Much water has flown under the bridge and all these workmen who were junior to him has been regularized with the passage of time for the reasons that they continued the work and ultimately they came in the zone of regularization. The petitioner remained absented and did not raise the demand on time and therefore, he can not get equal treatment with those who have actually work hard and obtained the status of regularization by dint of their hard work. The petitioner is entitled relief of compensation for the wrong done to him and in lieu of reinstatement and all other benefits. The law is well settled to the effect that when there is long delay in approaching the court, the reinstatement is not the remedy but the workman can be compensated in terms of money. Thus taking into account, the number of days for which the petitioner has worked and the delay in approaching the court, the ends of justice shall be met, in case, the respondent is directed to pay compensation in lump sum in lieu of reinstatement and other benefits to the tune of Rs.25,000/- (Rupees Twenty Five Thousand Only). The petition is maintainable for the reason that it has been filed in support of the reference. Hence both these issues are decided accordingly.

#### RELIEF

12. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 13 years and his claim for reinstatement has thus been vitiated by delay and laches, hence, reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹25,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of August, 2023.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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#### IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 50/2019  
Date of Institution : 23-5-2019  
Date of Decision : 03-8-2023

Shri Ajay Thakur s/o Shri Amar Singh, r/o Village Bhagot, P.O. Majhwar, Tehsil Ghumarwin, District Bilaspur, H.P.

*Versus*

1. The HR Manager, M/s Syska LED Lights Private Limited, Plot No. 89/90/91, Servey No.232/1+2 Off., VIP Airport Lane No.4, Sakre Nagar, Lohegaon, Pune-14

2. The State Head, M/s Syska LED Lights Private Limited, SCO -14, Sector 66 A, Phase-9, Industrial Area, Mohali-160062 (Chandigarh) . .Respondents.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent(s) : Sh. Neeraj Bhatnagar, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the termination of services of Shri Ajay Thakur s/o Shri Amar Singh r/o Village Bhagot, P.O. Majhwar, Tehsil Ghumarwin, District Bilaspur, H.P. by the (1) The HR Manager, M/s Syska LED Lights Private Limited, Plot No.89/90/91, Servey No.232/1+2 Off., VIP Airport Lane No.4, Sakre Nagar, Lohegaon, Pune-14, (2). The State Head, M/s Syska LED Lights Private Limited, SCO -14, Sector 66-A, Phase-9, Industrial Area, Mohali-160062 (Chandigarh) w.e.f. 12.01.2017 without serving notice, without holding any domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved ex-worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim petition is that he was appointed as sales executive vide his appointment letter dated 16.03.2016 at Bilaspur on monthly salary of Rs.17857/- and he worked as such till 10.1.2017. to the satisfaction of the respondent. His services were unlawfully terminated by Mr. Sanjay Thakur, who was not even the appointing authority, orally through e-mail dated January 9, 2017. No notice was served upon the petitioner, no charge-sheet was served and no inquiry into the alleged misconduct took place. No one month's pay was paid to him and violation of Section 25-F took place. Persons junior to the petitioner were retained and fresh hands were also engaged after his termination. His salary was also withheld, and therefore, he was entitled for the relief of reinstatement with full back wages etc.

3. The respondent has resisted and contested the petition on the plea that petitioner has not approached the court with clean hands and he had no cause of action. The appointment of the petitioner as sales executive is admitted and his gross salary to the tune of Rs.17857/- is also admitted but his behaviour towards his senior was not good and he was warned time and again to improve the same but he failed to amend the same, hence, his services were terminated. Only 10 days salary was pending for the reason that he has not completed full and final exists procedure and the same also shall be released on the completion of the formalities. The petitioner was cautioned about his shortcoming but he did not improve, and therefore, his services were terminated. Other allegations are denied. It is stated that neither junior was retained nor fresh hands were engaged. In these facts and circumstances the respondent has prayed for dismissal of the petition.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 07.4.2022:—

1. Whether termination of the services of the petitioner by the respondents w.e.f. 12.01.2017 is/was illegal and unjustified?
2. If issue no.1 is proved in affirmative, to what service benefits, the petitioner is entitled? . . .*OPP*.
3. Whether the claim petition is not maintainable as alleged? . . .*OPR*.
4. Whether this Court has jurisdiction to try and entertain the petition as alleged? . . .*OPR*.
5. Whether the petition is barred by limitation and laches, as alleged? . . .*OPR*.
6. Whether the petitioner has no cause of action and locus standi to file the present case, as alleged? . . .*OPR*.
7. Whether the petitioner has estopped by his act and conduct to file the present case, as alleged? . . .*OPR*.

Relief.

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Affirmative
Issue No. 2	:	Affirmative
Issue No. 3	:	No
Issue No. 4	:	Negative
Issue no. 5	:	No
Issue No. 6	:	No
Relief	:	Petition is <b>partly allowed</b> per operative portion of the Award.

#### REASONS FOR FINDINGS

Issue No.1

8. The language of the reference received by this court is very material and needs to be highlighted before the merits of the contentions raised by the parties are considered. The specific

case of the petitioner before the Conciliation Officer was to the effect that his services were terminated without serving any show cause notice and charge-sheet, as well as without holding any domestic inquiry into the allegations, hence, such termination was illegal and in violation to the provisions of Industrial Disputes Act. The parties entered in the conciliation proceedings on these allegations. When the matter could not be settled during the conciliation proceeding the reference was made to this court in which the specific question referred is as to whether termination of the services of the petitioner without serving any notice and without holding any domestic inquiry was legal and justified? It is in this background that this court has to examine the respective contentions of the parties.

9. So far as engagement of the petitioner as Sales Executive by way of appointment letter on monthly salary of Rs.17857/- is concerned, this fact is admitted on the record. The respondents has placed on record the appointment letter dated 14 March, 2016 as Ext.RW1/D8. This appointment letter is accompanied by the terms and conditions shown in Annexure-B. This appointment letter, is therefore, an important document and needs proper scrutiny. As per Annexure-B, the petitioner was supposed to remain on probation for six months and thereafter, his services were to be confirmed. The services of the petitioner could be terminated by the company after serving him one month's notice or payment of one month salary in lieu thereof. As per the terms and conditions, in case, there were allegations of misconduct or gross default which contravened the express and implied conditions of the employment are levelled, the services of such workman could be terminated without any notice. In case, these terms and conditions are gone through then the services of the petitioner could be terminated without notice or payment of salary, in case, he was guilty of gross default or misconduct of such a nature which contravened the express or implied conditions of the employment. This clause would mean that the employer shall have to record the finding on his guilt of gross default or misconduct. In case, such findings are recorded, only then serving of notice was not mandatory. If these terms and conditions of the appointment letter are examined, it is very much clear that, in case, the services of workman are proposed to be terminated without serving any notice, the employer has to adjudge the guilt of gross default or misconduct of the employee. Findings of gross default or misconduct can be given after a domestic inquiry is conducted. In the case in hand, admittedly no domestic inquiry has been conducted by the employer into alleged misconduct of the petitioner and the conciliation officer, therefore, submitted the matter to appropriate Government and appropriate Government referred this fact to this court for adjudication. The services of the petitioner could not have been terminated in the alleged manner and it was necessary to conduct the domestic inquiry and give the petitioner a complete opportunity to defend himself. Only thereafter the allegations of gross default or misconduct could have been established. In the case in hand, no such domestic inquiry was conducted and thus the petitioner was condemned unheard. Termination of his services for any misconduct amounts to punishment and punishment can not be imposed without holding an inquiry in which the delinquent has been given complete opportunity to defend himself.

10. It is settled law by now that when domestic inquiry report is assailed by the employee on the ground of being unfair or on the ground that sufficient opportunity was not given to him to defend himself or on the ground that procedure required to conduct such inquiry so as to give him a complete opportunity to defend himself was not followed, the labour court has to decide this fact by framing a preliminary issue. In case, such an inquiry report withstands the judicial scrutiny, the next step for the court is to examine the penalty part in order to find out whether it is excessive or disproportionate in the proved set of circumstances or not. In case, the preliminary inquiry report does not withstand the judicial scrutiny then it is for the court to give the employer an opportunity to lead independent evidence before the court on his request to prove the alleged misconduct by leading independent evidence in support thereof. In case misconduct is proved then again the court has to examine the question of adequacy or otherwise of the punishment already awarded the workman. It is also settled law that when no inquiry has been conducted at all in that case also, it is

duty of the court to give the employer and opportunity to lead the evidence of that particular misconduct on the request of the employer and then examine the question again. Reference may be made to the judgment of Hon'ble Supreme Court in **Civil Appeal No. 3585 of 2008** titled as **Kurukshetra University versus Prithvi Singh decided on 15.02.2018** and **CIVIL APPEAL NO. 7536 OF 2021 Uttar Pradesh State Road Transport Corporation, Appellants Vs. Gajadhar Nath, respondent decided on 08.11.2021**

11. In the case in hand, since no inquiry into alleged misconduct of the petitioner had taken place at the hand of the respondents therefore, it was for the respondents to prove the alleged misconduct by leading evidence before this court. After the issues were framed, the petitioner led the evidence in support of his case by stepping in the witness box as PW1. He has sworn his affidavit Ext.PW1/A referring to all the contents of his claim therein. He was subjected to cross-examination by the respondents. It was the duty of the respondents to have questioned the petitioner with respect to the alleged misconduct. He denied specifically that he started misbehaving with the senior officers of the company. He admitted that he was warned through e-mails by seniors and asked to improve his behavior. The petitioner, however, denied that he has felt sorry for his misbehavior. He denied that he did not improve and his behavior thereafter became bad to worse. He volunteered to speak that he has worked to the best of his ability and to the satisfaction of the employer. In nutshell, the case revealed by the respondents in the reply so filed and put to the petitioner during his cross-examination is to the effect that his behavior with his seniors was not appropriate and his work was also no. satisfactory, hence he was firstly warned through e-mails and his services were terminated later on when he did not show any improvement. The petitioner has specifically denied this case during the cross-examination and no admission has been made by him which could go to prove that he was misconducting himself and misconduct was of such nature that termination of his services were only option.

12. The respondents in order to prove alleged misconduct has examined Shri Yogesh Ramdas, who too has filed a detailed affidavit Ext.RW1/A in which the allegations levelled in the reply have been replicated to the effect that petitioner was misbehaving with the senior officers of the company and, therefore, the company took the decision to discontinue his services and terminated him accordingly. He has also stated about the warning E-mails etc. This witness has tendered on record the authority letter in his name as Ext.RW1/B. He is infact Senior Executive (Legal) in the respondent office and he has also tendered on record seven E-mails Ext.RW1/C1 to Ext.RW1/C7. He has also tendered on record appointment letter of the petitioner as Ext.RW1/D and copy of salary break up as Ext.RW1/E. When he was subjected to cross-examination he again admitted that no domestic inquiry was conducted in the matter. When the E-mails Ext.RW1/C1 to Ext.RW1/C7 are examined it is clear from E-mail dated January 9, 2017 that the services of the petitioner were being discontinued on the basis of feedback received by the Mandi team. Ext.RW1/C2 is E-mail by the petitioner whereby he has denied the allegations and clarified that in his entire career, he has never made any wrong comments to any retailer. Ext.RW1/C2 and Ext.RW1/C3 are the E-mails regarding the fact that phone calls were not been attended by the petitioner. Ext.RW1/C5 is another attachment E-mail whereby two allegations have been leveled against the petitioner. First is regarding non performance, and second is regarding continued misbehavior despite of the warning given to him. Ext.RW1/C6 is regarding the last drawn salary etc. of the petitioner. When these E-mails are carefully examined it is clear from the same that the petitioner was either not picking up the phone of his seniors or he has made some comments to the retailer. The petitioner never admitted these allegations and explained through return E-mails that he has never commented upon any retailer throughout his career and the allegations were wrong. So far as the phone calls are concerned, the petitioner has himself explained that his phone was on silent mode and he could not pick up the same on time and he had later on settled this issue with his officer. Except these allegations, there is nothing against the petitioner which could be termed as misconduct. It is for the employer to firstly level specific allegations by pleading the instance of

the misconduct in the reply filed to the claim petition. Thereafter the respondents should have proved those allegations by leading evidence. In this case, the allegations have not been specifically pleaded and details of such misbehavior are missing. The petitioner can not be taken by surprise. No witness has come forth to speak about the instances of such misbehaviour. Had any such officer of the respondents appeared before this court and narrated the details of misbehaviour on oath then petitioner would have received an opportunity to cross-examine him and impeach his testimony. No officer of the respondents who were allegedly misbehaved by the petitioner has stepped into the witness box. Thus the evidence to prove the misbehavior on the part of the petitioner is absolutely lacking. The statement of RW1, Executive (Legal) of the respondent company is not sufficient as he was neither misbehaved nor he has quoted any such instance. Some E-mails filed and tendered on the record as evidence are deficient to prove the alleged misconduct of the petitioner. The officers who were allegedly misbehaved did not step in the witness box at all and the allegations could not be established. Had they stepped in the witness-box and spoken about the manner in which the petitioner had misbehaved, the petitioner would have received an opportunity to cross-examine them. So far as second allegation of continuous non performance is concerned, the details thereof are also lacking on the record. There are no pleadings on the record to prove as what were the targets given to the petitioner and how he could not achieve the same. No show cause notice was served upon the petitioner asking him to improve his performance. No material has proved on the record to show that particular deficiency occurred in the services of the petitioner and he was asked to explain his position but he did not explain at all and also did not improve his efficiency. No document has seen the light of day which could speak of the fact that a particular target was required to be achieved by the petitioner.

13. Thus for the aforesaid discussion, it is proved that the services of the petitioner were terminated without holding any domestic inquiry into the allegations of alleged misconduct and non performance. It is also proved that the respondents have neither pleaded specifically the particulars of the misconduct in the reply and nor proved the same by leading cogent evidence on their turn. As already said hereinabove, when no domestic inquiry was held by the respondents into the allegations, the respondent had second option of pleading the particulars of such misconduct in their reply and prove the same by leading evidence. The respondents have neither specifically pleaded the misconduct and acts of non performance by the petitioner with particulars nor have proved the same by leading cogent and convincing evidence. It can, therefore, be not be said that petitioner was a non performer and such non performance amounted to misconduct sufficient to justify the penalty of termination from services. The alleged misconduct is also not established. Thus it is held that the respondents have terminated the services of the petitioner illegally and in an unjustified manner by conducting no domestic inquiry. It is further held that the respondents have failed to justify the termination by leading independent evidence before the court regarding the alleged misconduct and non-performance. When such is the position, the order of termination of the services of the petitioner for the alleged misconduct and non performance is based upon no evidence and such termination can not sustain. So far as violation of the other provisions of this Act is concerned, this question does not arise for consideration in this case as the services of the petitioner were terminated as a measure of penalty and his services were not retrenched. Had the petitioner been retrenched for want of work or illegally without following the procedure then court would have gone into the question whether there were violations of Sections 25-F, 25-G and 25-H of the Act in this case. Since the services of the petitioner were terminated and mark of penalty finding him guilty of misconduct and non performance, therefore provisions of Sections 25-F, 25-G and 25-H of the Act are not applicable to the present case. Since the respondents have failed to prove the alleged misconduct and non performance therefore, the act of termination of the services without holding any domestic inquiry and without independently proving the misconduct and non performance before this court despite of the fact that the respondent was the complete opportunity to lead the evidence is not sustainable.

14. Once this is the position the petitioner is entitled for reinstatement in service and he is also entitled to seniority, past service benefits etc. He is also entitled for back wages for the reasons that his termination is not based upon any material which could be termed as sufficient to terminate his services. Law is well settled to the effect that when a workman absents from his duty on account of termination and not for his own fault, he can claim back wages for the reason that he was always ready to work. No evidence has been led by the respondents that the petitioner was employed somewhere else during this period and he has been earning by doing some other work. Therefore, he is held entitled for back wages. Taking into account in totality the facts and circumstances it will be appropriate to grant lump sum of Rs.1,00,000/- ( One Lakh only) in lieu of back wages. This issue is also held decided in affirmative.

#### ISSUE No. 2

15. In view of the discussions of issue no.1, it is held that the petitioner is entitled for reinstatement with seniority and continuity in services. He (petitioner) is also held entitled Rs.1,00,000/- (Rupees One Lakh Only) in lieu of back wages, hence this issue is also held in affirmative.

#### ISSUE No. 3

16. In view of findings on issue no.1 the claim petition is very much maintainable as the petitioner has filed the claim petition in support of the reference made by the appropriate Government, hence this issue is decided in negative.

#### ISSUE No. 4

17. Since the reference has been received from the appropriate Government for adjudication by this court, therefore, this court has the jurisdiction to try the petition and there is no reason to hold otherwise. This issue is also held in negative against the respondents.

#### ISSUE No. 5

18. So far as the question of delay and laches is concerned, it may be stated here that the services of the petitioner were terminated in the year 2017 and he has immediately commenced the proceedings and there is no delay on part of the petitioner, hence this issue is decided against the respondents.

#### ISSUE No. 6

19. The petitioner has the cause of action and locus standi in view of the discussions on issue no.1 hence issue no.6 is also decided against the respondents.

#### ISSUE No. 7

20. There is nothing on the record which would act as estoppel against the petitioner to file the claim, hence issue no.7 is decided against the respondents.

#### RELIEF

21. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondents are directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of his termination. The



petitioner is also held entitled for Rs.1,00,000/- (One Lakh Only) as consolidated amount towards back wages, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of August, 2023.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 97/2020  
Date of Institution : 06-10-2020  
Date of Decision : 04-8-2023

Smt. Billo Devi w/o Shri Prem Raj, r/o Village & P.O. Mohanghatti, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

*Versus*

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Dinesh Singh, Ld. Adv.  
For the respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

“Whether time to time termination of daily wages services of Smt. Billo Devi w/o Shri Prem Raj, r/o Village & P.O. Mohanghatti, Tehsil Joginder Nagar, District Mandi, H.P. during December, 2006 to February 2020 and finally during March, 2020 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P.,

without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is that she was engaged in the month of March, 2003 by the respondent on daily wage basis and she was given time to time breaks with ulterior motive and finally her services were terminated in February 2020 in violation of Sections 25-F, 25-G and 25-H of the Act. She had thus claimed relief of reinstatement with all consequential benefits.

3. The respondent has resisted and contested the claim and pleaded that petitioner has worked mostly on bill vouchers basis and no violation of any provisions of the Industrial Disputes Act has taken place in this case hence claim be dismissed.

4. The petitioner has filed rejoinder and following issues were framed on 15 June 2022:—

1. Whether time to time termination of services of the petitioner during December, 2006 to February, 2020 and finally during March, 2020 by the respondent is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the petitioner has no locus-standi to file the present case, as alleged? . . .*OPR*.

Relief.

5. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	Decided accordingly
Issue No. 4	:	Decided accordingly
Relief	:	Petition is <b>dismissed</b> per operative portion of the Award

#### REASONS FOR FINDINGS

Issues No.1 and 2

6. Since the petitioner has led no evidence on these issues nor she is interested in pursuing the matter therefore, in absence of evidence issue no.1 is held against the petitioner and issue no. 2 is also against her. She is held entitled for no relief.

Issues No. 3 and 4

7. Since no evidence has been led by the respondent on the issues no. 3 and 4, therefore, these issues are held against the respondent. Rather no findings are required on these issues when

petitioner is herself not interested in pursuing the claim. Hence, issues no. 3 and 4 are decided accordingly.

8. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2023.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 99/2020

Date of Institution : 06-10-2020

Date of Decision : 04-8-2023

Smt. Kanta Devi w/o Shri Prem Chand, r/o Village Malu, P.O. Mohanghatti, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

*Versus*

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Dinesh Singh, Ld. Adv.

For the respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :1

“Whether time to time termination of daily wages services of Smt. Kanta Devi w/o Shri Prem Chand, r/o Village Malu, P.O. Mohanghatti, Tehsil Joginder Nagar, District Mandi, H.P. during May, 2006 to November 2019 and finally during December 2019 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal

and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is that she was engaged in the month of March, 2003 by the respondent on daily wage basis and she was given time to time breaks with ulterior motives and finally her services were terminated in February 2020 in violation of Sections 25-F, 25-G and 25-H of the Act. She had thus claimed relief of reinstatement with all consequential benefits.

3. The respondent has resisted and contested the claim and pleaded that petitioner has worked mostly on bill vouchers basis and no violation of any provisions of the Industrial Disputes Act has taken place in this case hence claim be dismissed.

4. The petitioner has filed rejoinder and following issues were framed on 15 June 2022:—

1. Whether time to time termination of services of the petitioner during May, 2006 to November, 2019 and finally during December, 2019 by the respondent is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the petitioner has no locus-standi to file the present case, as alleged? . . .*OPR*.

Relief

5. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Decided accordingly
Issue No. 4	: Decided accordingly
Relief.	: Petition is <b>dismissed</b> per operative portion of the Award

#### REASONS FOR FINDINGS

Issues No.1 and 2

6. Since the petitioner has led no evidence on these issues nor she is interested in pursuing the matter therefore, in absence of evidence issue no.1 is held against the petitioner and issue no. 2 is also against her. She is held entitled for no relief.

Issues No. 3 and 4

7. Since no evidence has been led by the respondent on the issues no. 3 and 4, therefore, these issues are held against the respondent. Rather no findings are required on these issues when

petitioner is herself no interested in pursuing the claim. Hence, issues no.3 and 4 are decided accordingly.

8. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2023.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 209/2017

Date of Institution : 04-1-2017

Date of Decision : 04-8-2023

Shri Jagdish Kumar s/o Shri Ganga Ram Sharma, r/o Village Bag, P.O. Deola, Tehsil Sunni, District Shimla, H.P. . . *Petitioner.*

*Versus*

Sh. Sunil Malik, Director, Kufri Fun World, Near Mahasu Peak at Kufri, Shimla, H.P. . . *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Sandeep Kumar, Ld. Legal Aid Counsel

For the respondent : Already exparte

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether termination of the services of Sh. Jagdish Kumar s/o Sh. Ganga Ram Sharma, r/o Village Bag, P. O. Deola, Tehsil Sunni, Distt. Shimla who was working as salesman, by the Director, Kufri Fun World, Near Mahsu Peak at Kufri, Shimla (H.P.) w.e.f. 23.4.2015 through verbal orders, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages,

reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is that the petitioner was engaged after interview as salesman by the respondent through its Director w.e.f. 17 September 2014. His salary was fixed as Rs.5500/-. The petitioner joined the work and continued the same till April 2015. His services were terminated without serving one month's notice. The respondent started paying Rs.2000 or Rs.3000/- per month to the petitioner after two months of his engagement, but, his signatures were forcibly obtained on the salary voucher of Rs.5500/-. The workmen junior to petitioner were retained and principle of 'first come last go' was also violated. Neither the gratuity was paid to the petitioner while his services were terminated nor other dues were paid. The petitioner moved application dated 21.5.2015 to Conciliation Officer-cum-Labour Inspector. The respondent played dilly-dally before Conciliation Officer and did not pay anything to the petitioner. His services were also not reinstated. The petitioner is unemployed and has three children to look after and maintain. On account of paucity of funds, he is unable to impart proper education to them. The petitioner served a demand notice on the directions of the Labour Inspector asking the respondent to pay him Rs.10 lakh to 12 lakh but nothing was done by the respondent. The respondent took the services of the petitioner at various corners of the resort like juice corner, Chatni corner and he was also asked to sell the tickets at the ticket corner, whereas, his engagement was that of a salesman. The petitioner is ITI trained and hardworking but he was mentally tortured and driven to financial crises in his life. On all these averments, the petitioner has prayed for the relief of reinstatement and other financial benefits as referred in the prayer clause.

3. The respondent did not put his appearance through its Director or other authorized representatives despite of the fact notice through speed post was served for the date fixed and the track report of postal department was obtained which be placed Part-A of the file. As per this report the item was successfully delivered to the addressee. Despite of calling the case time and again, the When respondent did not put appearance it was ordered to be heard exparte and the petitioner was directed to lead evidence. It may be stated here that petitioner is being represented by legal aid counsel provided under legal aid scheme.

4. The petitioner in support of his case has sworn his affidavit Ext.PW1/A. He has tendered demand notice Ext.PW1/B, copies of applications Ext.PW1/C and Ext.PW1/D and photocopies of alleged salary vouchers as Ext.PW1/E1 to Ext. PW1/E10.

5. In this case, as aforesaid, the respondent did not contest the proceedings and chose to remain exparte. When the respondent decides to remain exparte, the court can presume that he does not want to contest the claim for the reason that he is not able to meet the allegations. A second presumption also arises to the effect that the respondent knows it well that even if case of the petitioner is left unrebutted even then, it is bound to fail for want of merit in the same. When the case is bound to fail in all probabilities, there is no need to contest the same and spend on the litigation. Both these presumptions can be drawn by the court by taking into account the circumstances of each and every case.

6. In the case in hand before either of the two presumptions are drawn, it is necessary to examine the petition and evidence in support thereof. The reference received from the appropriate Government seeks adjudication by this court on the verbal termination of the services of the petitioner by the respondent w.e.f. 23.4.2015. This court is supposed to answer as to whether there has been violation of any provisions of the Act while the services of the petitioner were terminated. It is for this court to answer the further question as to what relief the petitioner is entitled to, in case, violation is established.

7. Whenever the services of the petitioner have been terminated by the respondent, the court has to examine the case mainly for the violation of Sections 25-F, 25-G and 25-H of the Act. In case the termination of services has taken place on proof of some misconduct on the part of the petitioner then the court is supposed to examine whether domestic inquiry into allegations has been conducted by the employer, and if yes, whether the employee was given complete opportunity to defend himself during the inquiry. The court has further to see as to whether the inquiry was free and fair. In case, the inquiry report sustains, then court has to examine the proportion of the penalty imposed upon the employee. In case, the court sets aside the domestic inquiry report then it is for the employer to lead independent evidence before the court to prove the misconduct and the employee is given the opportunity to prove that the misconduct is not established.

8. In the case in hand, since it is not case of the petitioner that his services were terminated on any alleged misconduct therefore, the court has to examine only three facts. Firstly whether there is violation of Section 25-F of the Act in this case. Secondly whether the principle of 'first come last go' has been violated, and finally, whether there is violation of Section 25-H of the Act for the reasons that while employing the workmen, the petitioner, who was retrenched earlier was not given priority and opportunity to return to the work and fresh hands were engaged. It is for this court to examine the evidence from the aforesaid angles before arriving at any conclusion.

9. Dealing with the first situation, it is in the pleadings itself that petitioner was engaged w.e.f. 17 September 2014 and his services were terminated in April 2015. Even if the entire period is counted towards the net working days, still such number of days comes to less than 240. When the petitioner has not worked for minimum 240 days in a calendar year, the violation of Section 25-F is not made out and there was no requirement of notice to be served upon the petitioner before his services were terminated. There was no requirement of calculation and payment of any compensation to the petitioner. Thus the respondent has certainly not violated the provisions of Section 25-F of the Act.

10. The next question this court has to examine is whether the principles of 'First come Last go' was violated by the respondent in this case. The petitioner has averred in para no.5 of the claim that principles of 'First come Last go' was violated by the respondent as juniors were kept in service and petitioner was ousted. There is no rebuttal to this allegations by the respondent. The question is whether the case of the petitioner stands proved in the absence of any rebuttal. The answer in my humble opinion is in negative. Simply by pleadings that principle of 'First come Last go' was violated, the purpose is not served. The petitioner has since worked with the respondent and he is therefore, supposed to know as to who were the workmen engaged after him and not terminated first in time. It was the duty of the petitioner to have named all these workmen in the pleadings. The petitioner has not named any workman who was engaged after him and retained while his services were terminated by way of verbal order. Had he named such persons, the court would have believed his case and held that provisions of Section 25-G was proved to have been violated. Since the petitioner has not named any workman as his junior who was retained at his cost, therefore, the court can not hold the violation of Section 25-G of the Act merely on assumptions. It is expected from the aggrieved party approaching the court that he/she will lead minimum required evidence to establish the plea so that the onus to prove otherwise could be shifted upon the respondent. The court can not act on the presumptions and assumptions unless better particulars are pleaded and evidence is led in support of the same. The petitioner is master of his case and when he can plead that violation of 'First come Last go' has taken place, he can certainly plead the names of those workmen who were engaged after him and retained at the time of termination of his services. The petitioner has himself worked for seven months and it was therefore, very easy for him to plead as to who were those workmen engaged after him during the period of these seven months. Had he named them in the pleadings and spoken about them on oath, the things would have different. He could have get the record summoned from the respondent

office through the process of this court. Since the petitioner has not done anything therefore, merely by pleadings that the principle of 'First come Last go' was violated by the respondent the purpose is not served for the aforesaid reasons, and it is not established that any workman junior to him was retained. The petitioner has tendered on record one notice sent by him to the respondent as Ext.PW1/B. When this notice is carefully gone through there is nothing in the same to point out that any junior was retained and services of the petitioner were terminated. The petitioner has proved on record another letter as Ext.PW1/C. It was sent by him to learned Presiding Judge, Labour Court Shimla. There is nothing in this application to show that any workman junior to him was retained on his case. Ext.PW1/D is another letter which also does not find mention of the name of any workman who was junior to the petitioner. Therefore for the aforesaid reasons the violation of Section 25-G of the Act is not established.

11. The petitioner has neither pleaded nor proved that any fresh hand has been engaged after his termination and he was not given priority and preference in the matter of employment, thus violation of Section 25-H of the Act is also not made out.

12. The petitioner has raised an issue of wages in this case. Though this court has not been asked to adjudicate upon this question by way of reference by the appropriate Government yet this plea has since been raised in the petition, therefore it is being dealt with. The petitioner has submitted in paras no. 2 and 3 of the claim that his salary was fixed as Rs. 5500/- but he was paid Rs. 2000/- and Rs. 3000/- per month whereas, salary voucher of Rs. 5500/- was forcibly and illegally got signed from him by the company. This plea would mean that though petitioner was paid Rs. 2000/- and Rs. 3000/- yet the salary voucher of Rs. 5500/- regarding his salary was got signed from him forcibly. The petitioner has made vague plea regarding the fact as to when Rs. 2000/- and Rs. 3000/- was paid to him. The petitioner has tendered some photocopies of the alleged vouchers on the record Ext.PW1/E1 to Ext.PW1/E10. These documents are suspicious for various reasons. Firstly, the petitioner has not proved and explained on the record as to how he came in his possession of these vouchers as such vouchers are retained by the employer. How and when the employer has parted with these documents in favour of the petitioner? There is no explanation on this point. Secondly, all these vouchers do not find signatures of any accountant or authorized person of the respondent. Simply it is shown to have signed by the petitioner. Thirdly, these vouchers find mention different amount of the salary for all the months. Sometime Rs. 2000/- is mentioned in the document and sometime Rs. 3000/- and sometime Rs. 5500/- etc. has been mentioned on the same. The case of the petitioner is otherwise. He has pleaded that vouchers were filled and signed for Rs. 5500/- forcibly from him, whereas, he was paid less amount. In case, the pleadings are considered then all the vouchers should have find mention of the words and figure of Rs.5500/-. Thus these documents are suspicious in nature and no reference can be placed upon the same. Otherwise also, the petitioner has pleaded in his claim that he was interviewed by the respondent before his engagement. In case, any interview has taken place then advertisement must have been circulated/published, which would have come to the notice of the petitioner. It is only thereafter that the petitioner must have applied for the same. Had the copy of advertisement been placed on the record, this court would have gone through the terms and conditions of the employment and the amount to be paid to the appointed workman. Since the petitioner has not placed any such document on the record, therefore, it can not be said that the salary of the petitioner was settled as Rs. 5500/- per month by the respondent. The petitioner could have examined any other co-worker or his own family members to depose about the fact that the salary of the petitioner was agreed as Rs.5500/- per month. Thus for all these reasons the monetary relief can not also granted as prayed for.

13. In nutshell, the petitioner has failed to prove that while terminating his services on 25.4.2015 by verbal orders, the respondent has violated any provisions of the Industrial Disputes



Act. When such is the position, the petitioner is not entitled for any relief and the reference is, therefore, answered in negative and against the petitioner. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2023.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 133/2016

Date of Institution : 17-3-2016

Date of Decision : 04-8-2023

Shri Subhash Chand s/o Shri Hari Singh, r/o Village Ruwara, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

*Versus*

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L, Joginder Nagar, District Mandi, H.P.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Vijay Kaundal, Ld. Adv.  
: Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the industrial dispute raised by the worker Shri Subhash Chand s/o Shri Hari Singh, r/o Village Ruwara, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. before the Senior Executive Engineer, Electrical Division, HPSEBL, Joginder Nagar District Mandi, H.P. vide demand notice dated 17.12.2012 regarding his alleged illegal termination of service w.e.f. 25.03.1999 suffers from delay and laches? Whether termination of the services of Shri Subhash Chand s/o Shri Hari Singh, r/o Village Ruwara,

P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. by the Senior Executive Engineer, Electrical Division, HPSEBL, Joginder Nagar, District Mandi, H.P. w.e.f. 25.03.1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, in brief, is that his services were engaged as daily waged beldar w.e.f. 25.10.1997 by the respondent and he worked upto 24.3.1999 with interruptions and his services were terminated without any notice, inquiry etc. vide letter dated 5.3.1999 on the pretext that no work and fund was available. Workmen namely S/Sh. Prithi Chand, Subhash Chand and Safi Mohd were engaged in the year 1999 particularly in the months of June, July and October, whereas, no preference was given to the petitioner. One Piar Chand was engaged on 25.2.1999 and his services were terminated on 21.4.1999. He approached the courts and his reinstatement with 50% back wages was ordered. The respondent is alleged to have violated the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner raised the demand vide demand notice dated 17.12.2012 but reference, was declined by the appropriate Government on the ground of delay. The petitioner assailed this order by way of Writ Petition being CWP No. 34/2016 which was decided on 7.1.2016 and Government was directed to refer the matter to this court for adjudication. The petitioner in the year 2016 came to know about the fact that around 710 posts of various categories were being filled up by the respondent department, and therefore, his services were liable to be re-engaged w.e.f. 25.3.1999 with full back wages, continuity, seniority and other benefits.

3. The respondent filed reply and admitted the date of engagement of the petitioner. As per the respondent, the petitioner has worked only for 188 days till 24.3.1999 whereafter, he left the work at his own and abandoned the same. The petitioner was in the habit of remaining absent even in between, and he finally left the job on 24.3.1999, hence, there was no question of violation of Sections 25-F, 25-G and 25-H of the Act. The respondent prayed for dismissal of the claim.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. According to him, the work was never abandoned by him and he was rather made to believe that whenever the work was available, he shall be recalled.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 26.6.2018:—

1. Whether the industrial dispute raised by petitioner vide demand notice dated 17-12-2012 qua his termination of service w.e.f. 25-03-1999 by the respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent w.e.f. 25.03.1999 is/was legal and justified as alleged? . . .*OPP.*
3. If issue no.2 is proved in affirmative, to what service benefits, the petitioner is entitled? . . .*OPP.*

Relief.

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : Decided accordingly

Relief. : Petition is **partly allowed awarding lump sum compensation of Rs. 30,000/-** per operative portion of the Award.

### REASONS FOR FINDINGS

Issues No.1 to 3

8. All these issues are taken together for disposal for the sake of convenience and to avoid repetition of evidence.

9. The petitioner has examined one Shri Hem Singh, an official of respondent department to prove certain documents. He has tendered on record provisional seniority list of T-Mates of Electrical Division Joginder Nagar as it stood in the year 2011 as Ext.PW1/A, seniority list of T-Mates as it stood in the year 2005 as Ext.PW1/B and mandays chart of the petitioner as Ext.PW1/C. He has tendered on record joining reports of Shri Ramesh and Satwinder as Ext.PW1/D and Ext. PW1/E. So far as, the mandays chart is concerned, it is clear that the petitioner has worked only for 188 days in between 1997 to 1999. The petitioner has thus admittedly worked for less than 240 days in the period of twelve calendar months preceding his alleged termination, and, therefore, violation of Section 25-F of the Act is not established at all.

10. The case of the petitioner is to the effect that workmen junior to him were retained and fresh hands were also engaged. He has made specific pleadings regarding this fact in para no.6 of the claim. He has named S/Sh. Prithi Chand, Subhash, Safi Mohd. and Tara Chand as the workmen engaged in between June 1999 to October 1999. The services of the petitioner were terminated in March, 1999 and therefore, these workmen were definitely engaged after the petitioner. The respondent has not denied the dates regarding engagement of all the aforesaid persons nor any document contrary to the same has been proved on the record. The only case of the respondent is to the effect that he was irregular in his work and later on he willingly abandoned the services. The plea of abandonment being a plea of fact has to be established by the respondent by leading good deal of evidence. No evidence has been led to prove that any notice was served upon the petitioner during his absence to explain the position. The petitioner has made a reference of letter served upon him dated 5.3.1999 but copy of the same has not been placed by him. He has rather placed on record copy of similar notice served upon one co-worker namely Yog Raj. It is not clear as to why copy of the letter issued in the name of the petitioner was not produced by the petitioner. The respondent, on the other hand, is silent regarding the letter dated 5.3.1999. Since the petitioner has himself not brought on record such letter, therefore, nothing can be said about the same and court has to examine the plea of abandonment as taken by the respondent. As said hereinabove, no notice was served upon the petitioner asking him to join the duties and no inquiry was conducted into the reasons of his absence. No findings were given in any inquiry to the effect that petitioner has abandoned the work, hence, the plea of abandonment is not established. It is very much clear from para no.6 of the pleadings of the petitioner which have been reproduced in the affidavit Ext.PW2/A that workmen namely S/Sh. Prithi Chand, Subhash Chand, Safi Mohd. and Tara Chand were engaged after the services of the petitioner stood terminated. This being the position, there is a clear cut violation of Section 25-H of the Act as petitioner was entitled for priority in the matter of re-engagement. When fresh hands were being engaged petitioner should have been given the priority. Since the petitioner was not given any priority, therefore, violation of Section 25-H of the Act took

place in the matter. There is no cross-examination upon the petitioner regarding the contents of para no.6 of the affidavit. It is not put to him that these workmen were not engaged against the dates shown by him therefore, this evidence can not be ignored. Moreover Er. Gaurav Sharma in his affidavit Ext.RW1/A has also not said anything about the workmen shown in para no.6 of the affidavit of petitioner. The affidavit has been written on speculations and it is not on the definite plea. It is stated in the affidavit that the petitioner might have left the services with the passage of time or he might have been shunt out by the employer. Thus the respondent is not clear itself whether petitioner has abandoned the services or he was shunt out by the department. In case, this affidavit is examined the plea of the petitioner that his services were terminated by the respondent by way of letter can not be ruled out. In case, any such letter was served upon the petitioner which he although has not produced on record, yet it was the duty of the respondent to call him back whenever the work was available. Since, the petitioner was never called, therefore, violation of Section 25-H of the Act has taken place in this case and petitioner has a case in his favour. The petitioner has not stated specifically either in the affidavit or in the claim as to who are those workmen junior to him, who have been retained by the respondent at the time of termination of his services. The petitioner has got the seniority list of similar situated employees proved on the record Ext.PW1/A. A careful perusal of this list shows that it pertains to the year 2011. it is also clear that several workmen were engaged in between 1995 to 1999 and they were still working in the year 2011 and for this reason their names have been mentioned upto 2011. It shows that when the petitioner's services were terminated junior were retained. Otherwise also, it was duty of the respondent to call the petitioner back when he was absenting himself and it was the duty of the respondent to have apprised the petitioner about the fact that workmen junior to him were still working and therefore, a valuable right of first come last go already existed in his favour. Since nothing like this was done by the respondent, the plea of abandonment is not proved and failure of the plea of abandonment proves the plea of termination automatically. There is nothing in the cross-examination of the petitioner (PW2) to show that he has himself abandoned the services. There is nothing in the affidavit of Er. Gaurav Sharma (RW1) to prove that the petitioner has abandoned the services. The affidavit, as aforesaid, is based upon speculations and can not help the respondent in any manner.

11. Thus violation of Section 25-H is fully established in this case. It is admitted on the record that petitioner has raised the issue after more than 13 years and thus he kept sleeping of his valuable rights for a long period. The appropriate Government has also sought adjudication upon the delay of 13 years and therefore, it is duty of this court to adjudicate this plea. The petitioner knew right from the day of his termination that workmen junior to him were being retained and fresh hands were engaged in the year 1999 itself. Cause of action thus has accrued to the petitioner in the year 1999 itself. The petitioner, however, remained in slumber for more than 13 years and raised the demand for the first time in the year 2012 and he has thus failed to explain the delay satisfactorily. Much water has flown under the bridge and all these workmen who were junior to him has been regularized with the passage of time for the reasons that they continued the work and ultimately they came in the zone of regularization. The petitioner remained absented and did not raise the demand on time and therefore, he can not get equal treatment with those who have actually work hard and obtained the status of regularization by dint of their hard work. The petitioner is entitled relief of compensation for the wrong done to him and in lieu of reinstatement and all other benefits. The law is well settled to the effect that when there is long delay in approaching the court, the reinstatement is not the remedy but the workman can be compensated in terms of money. Thus taking into account, the number of days for which the petitioner has worked and the delay in approaching the court, the ends of justice shall be met, in case, the respondent is directed to pay compensation in lump sum in lieu of reinstatement and other benefits to the tune of Rs.30,000/- (Rupees Thirty Thousands Only). The petition is maintainable for the reason that it has been filed in support of the reference. Hence both these issues are decided accordingly.

## RELIEF

12. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 13 years and his claim for reinstatement has thus been vitiated by delay and laches, hence, reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹30,000/- (Rupees Thirty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2023.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 01/2022  
Date of Institution : 19-1-2022  
Date of Decision : 04-8-2023

Shri Omkar s/o Shri Dhan Dev, r/o Village Fihar, P.O. Sari, Tehsil Dharampur, District  
Mandi, H.P. . .Petitioner.

*Versus*

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, H.P.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. N. L. Kaundal, Ld. AR  
: Sh. Vijay Kaundal, Ld. Adv.  
: Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Gaurav Keshav, Ld. ADA

## AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the time to time termination of services/giving fictional breaks in the services of Shri Omkar s/o Shri Dhan Dev, r/o Village Fihar, P.O. Sari, Tehsil Dharampur, District Mandi, H.P. by the Divisional Forest Officer, Joginder Nagar, Forest Division Joginder Nagar, H.P. during November 2007 to September, 2020 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim petition is that he was engaged as beldar on daily wage basis by the respondent without any appointment letter in the year 1996 but payment was made to him on daily wage voucher basis. He had worked under the control and supervision of Range Officer Kamlah till September 2020 but fictional breaks were given to him time to time and he was thus prevented from completing 240 days in each calendar year so that he could not claim regularization as per the State Government policies. Feeling aggrieved, he raised demand vide demand notice dated 9.11.2020 and prayed for condonation of the breaks given w.e.f. 2007 to 2020 but nothing was done. The seniority lists filed during conciliation proceedings also find mention of his name. Similarly situated workmen namely Smt. Bimal Devi, Smt. Ramta Devi and others were also given fictional breaks and they approached the courts and Awards were passed in their favour. Fictional breaks were condoned. It is prayed that the petitioner was also entitled for same treatment. It is submitted that petitioner was always willing to work and fictional breaks were wrong and against the law, hence those breaks be condoned and the break period be counted towards his seniority. He has prayed for other consequential benefits including regularization in services as per the policies of the State Government.

3. The respondent resisted and contested the claim and took several preliminary objections regarding maintainability, cause of action, estoppels and delay and laches on the part of the petitioner in claiming the relief. On merits, the respondent denied that the petitioner was engaged on muster roll basis in the year 1996. It is explained that petitioner was engaged in the year 2007 on bill basis and work was allotted to him as per availability. The petitioner used to work along with his labourers and on completion the work was assessed as per the scheduled rates and payment was made which was many times higher to the daily wages. Bills were raised by him and paid by the department. The petitioner was paid more amount than the daily wages many time as the amount in bill basis matter can go much higher to the amount paid to a daily wager. The petitioner was not a daily wager nor he has worked on muster roll, hence, he has no case for condonation of the breaks as no breaks were given to him. The work once allocated was completed and payments were made on the completion of the work. The petitioner was thus not a daily wager. The petitioner is said to have raised issue after a long delay, and he was, therefore, not entitled for any relief. The seniority lists produced by him are said to be reference lists and the same can not be relied upon nor those lists prove anything in favour of the petitioner. The cases of other workmen are said to be on different footings and petitioner is not entitled any relief at par with the workmen shown by him in his claim. It is submitted that petitioner has no case of merits, and therefore, his claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the claim and denied those made in the reply. It is submitted that as per several bills the petitioner has been

shown to have worked on daily wage basis and payment was made to him on bill basis. He was not a contractor and therefore, the case of the respondent was liable to be rejected.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 10.11.2022:—

1. Whether time to time termination of services of the petitioner during November 2007 to September, 2020 by the respondent is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.
5. Whether the petitioner has no cause of action to file the present case, as alleged? . . .*OPR*.
6. Whether the petitioner is estopped from filing the present claim by his act, conduct and acquiescence, as alleged? . . .*OPR*.
7. Whether the petitioner has not come to this Court with clean hand and suppressed the material fact, as alleged? . . .*OPR*.
8. Relief.

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	Yes
Issue No. 5	:	Yes

### REASONS FOR FINDINGS

#### Issue No.1

8. When the pleadings of the petitioner are examined as a whole it is clear that he claims that he was engaged in the year 1996 and has worked till the year 2006 without any breaks. This plea has not been established by the petitioner. He has not led any evidence on this plea except for swearing his own affidavit. In case, the petitioner was engaged in the year 1996 and had worked till the year 2006 without interruptions then his services would have been regularized much earlier as in the year 2006 he would have completed 10 years of work. Even if, the regularization policy in place at that time provided for regularization of those workmen who have worked for 10 years as daily wagers even then he would have become eligible in the year 2006 for regularization and there

was no reason for him to remain silent. Petitioner has not examined any other co-worker before this court who could speak about the fact that the petitioner has worked with the respondent as a daily paid labourer and he had personal knowledge of the same. The plea of the petitioner therefore, is not proved on the face of it to the effect that he has worked with interruption from the year 1996 to 2020. Had he really worked as such, his muster roll would have been available. His name would have appeared in the seniority lists prepared after the year 1996.

9. The case of the respondent is to the effect that the petitioner has worked on bill basis after the year 2007. To establish this fact, the respondent has tendered on record various bills Ext.R1 to Ext.R13. These bills were also shown to the petitioner during his cross-examination and he has admitted that he has signed all these bills. The respondent has placed on the record notification/ letter of the Government of Himachal Pradesh Ext.RW1/B pertaining to the year 2001 whereby the Government had introduced the bill/contract basis work. As per this letter, the work of fixing of fence, fixing of polls, barbed wire, construction of roads and buildings, preparation of nursery beds, filling of polythene bags, construction of inspection path, bush cutting, carriage of material and soil and water conservation works were to be done on scheduled rates on bill basis. Ext.RW1/C is another notification in the year 2009 which also speak about all these thing and it is in compliance of these instructions the departments including the respondent had started allotting the work on bill basis. In bill basis system, the worker gets more amount than payable to the daily wager. He can also a complete the work within a short period with the help of more labourers. Ext.RW1/D is the bill basis work details of the petitioner and it is clear from the same that petitioner has been shown to have worked along with his own labourer who accomplished the work allotted to him. It is also clear from this document that amount received by the petitioner has not remained static. Sometimes it has increased and other times it has decreased, whereas, in case of a daily wager worker the daily wage remains consistent atleast for twelve months of the year unless it is revised in between. Such daily wage atleast does not decrease with the passage of time. As per this document Ext.RW1/D sometime petitioner has received the amount of more than 9000/- and sometimes he has received amount of Rs. 2000/-. It depends upon volume of the work allotted to the petitioner. In case the work done by the petitioner was assessed for 13950/- as has been shown in this document for February 2020 the he shall be paid Rs.13950/- for the month of March 2020. The petitioner has received a sum of Rs.17000/- and for the work done by him and he is shown to have worked with his labour. Thus it is clear from the bills and details of the work tendered on the record that petitioner was not worked as daily wager but he was worked on bill basis whereby a particular work was allotted to him which he used to complete with the help of the labourer and he was paid much more than daily wages on the completion of the work. The work was assessed as per the scheduled rates and petitioner was paid accordingly. This work is entirely different from the daily wage work whereas, muster roll is maintained in case of daily wager and the workman gets the daily wages as per the rates fixed by the Government year to year and daily wages never decreases with the passage of time. Had the petitioner worked on muster roll on daily wage basis his muster roll would have been maintained. Secondly, he would have received almost similar amount every month for the work done by him. In the year 2020 Rs.17000/- was not even the daily wages fixed by the State Government. Then how the petitioner could have received this amount had he worked as a daily wager. These documents proved on the record falsify the claim of the petitioner. The petitioner has during his cross-examination, while he appeared as PW1, admitted that he had signed all these bills. It is not the case of the petitioner that he was forced to sign same documents in order to create evidence in favour of the respondent. The petitioner has not examined any other workman who was working on muster roll with him. Had any other person been named by him then those workers could be examined before this court to prove the actual state affairs. The muster roll is not issued in favour of a particular workman but one muster roll is issued in favour of several workmen, and in case, the petitioner had examined any person who had worked with him as a co-worker then the court would have examined those muster roll to find out as to whether the name of the petitioner was recorded in that particular muster roll or not. The petitioner has not



alleged any bias against the officers of the department. There is no reason for the department to isolate the petitioner and give benefits to others. The affidavit Ext.PW1/A is replica of the claim and nothing has been said by him. He has rather admitted his signatures on the bills Ext.R1 to Ext.R13 and has failed to explain the things. He has himself pleaded in the claim that he was paid on bill basis. In case, the work was taken from him on muster roll and he was paid on bill basis there was no reason for him to keep mum for 13 years after 2007 and raise the issue in 2020 only. He could have raised the issue at earliest finding that the department was issuing muster roll in his name but paying him on bill basis. Muster roll and bill basis can not exists together and the department could not have done so even if the officers wanted to do so.

10. The petitioner has relied upon two seniority lists of the department in order to prove that he was a daily wager. These seniority lists pertains to the year 31.12.2012 and 30.11.2016. Both these lists have been tendered on record as Ext.PW1/B and Ext.PW1/C. The respondent, on the other hand, has come up with the case that these lists were infact reference lists and there were mistakes in the same hence, the same could not be relied in favour of the petitioner. Ext.PW1/B, the alleged seniority list as it stood on 31.12.2012, when examined shows that petitioner has been named as a casual labourer and shown at serial no.79 of the same. He is shown to have engaged on 8.12.2004. This date on the face of it shows that it is a wrong list and something is wrong with it. It is neither the case of the petitioner nor of the respondent that the petitioner was engaged on 8.12.2004. Had the petitioner raised any objection to get this list corrected in the year 2012, the position would have been different. The seniority list as it stood on 30.11.2016 also shows the name of the petitioner at serial no.88 and date of his engagement has been shown as 1.8.2008. This is again surprising as it is neither the case of the petitioner nor of the respondent that the petitioner was engaged on 1.8.2008. When both these lists are compared together, it can be said that the petitioner could not have been engaged on two different dates. Both these lists are self contradictory, hence, no reliance can be placed on the same. The seniority lists were prepared from the muster rolls. When no muster rolls were issued in favour of the petitioner then how these seniority lists could have been prepared. The respondent has proved on the record several bills which have been signed by the petitioner. In case, the petitioner has worked on muster roll there was no reason to prepare the bills and show that petitioner was worked on bill basis. The petitioner has not denied the amount so received by him through these bills and as aforesaid, the amount shown in these bills has not remained consistent but it has seen sharp increase or decrease month to month. Had the petitioner been a daily wager on muster roll, he would have received almost same amount every month as a wages and the wages would not have stretched upto Rs.18000/-. Even as on today the daily wages of a daily wager does not come to Rs.18000/- per month. These lists can not be relied upon. Though these documents have been prepared by the respondent and the respondent has not been able to explain the thing properly but these lists in themselves are self contradictory and suspicious and therefore, no reliance can be place upon the same by this court in order to give benefit to the petitioner. The respondent has examined Shri Kamal Bharti, the Divisional Forest Officer as RW1 and he has tendered on the record his affidavit Ext.RW1/A wherein he has mentioned all the facts pleaded in the reply. He has tendered on the record the notifications and one corrigendum Ext. RW1/E whereby it was mentioned that these lists Ext.PW1/B and Ext.PW1/C were to be treated as reference lists as the same were not the seniority lists for any purpose. He was subjected to cross-examination wherein he admitted that muster roll was issued in favour of the petitioner in the financial year 2008-2009. When the mandays chart/bill work charge Ext. RW1/D is carefully examined it is clear that during the entire period the petitioner was made to work only once on muster roll for August 2008 and he has worked only for 18 days and thereafter he has worked on bill basis. In case, there was changed in the terms and conditions of the services of the petitioner he should have raised the issue then and there and he has not raised this issue till the year 2020. Much water has flown under the bridge. In case, the petitioner has worked only for 18 days on muster roll it was for him to raise the demand immediately as he was never engaged on muster basis thereafter. He has not come up with the plea that during the period

of this 18 days any workman was engaged on muster roll and such workman was thus junior to him. The petitioner has not come up with the plea that after the year 2008 many workmen were engaged on muster roll basis. The case of the respondent, on the other hand, is specific to the effect that in view of notifications of the State Government the work was got done on bill/quotation or on tender basis after 2008 and no daily wages were engaged. Thus even if the petitioner has worked for 18 days in August 2008 on muster roll it will not help him in any manner as he has not raised this issue immediately thereafter and worked silently till the year 2020 on bill basis. Moreover, there is no reference from the appropriate Government to adjudicate upon the fact of change of terms and conditions of the employment in the year 2008. Thus the petitioner can not take any advantage out of the same.

11. Thus for the aforesaid discussion when the petitioner is proved to have worked on bill basis right from the year 2007 to 2020 he can not claim condonation of fictional breaks as work done on bill basis is entirely different work and it has no connection whatsoever with the daily wages as work on bill basis comes to an end the moment the work is accomplished and payment is made. It does not create the relationship of master and servant between employer and employee. Rather it is a sort of a contract given to a particular individual for a specific amount. Such contractor is at liberty to complete the work either during the day or during the night or by working through the labour or through his family members or through himself. The amount is assessed on the basis of the scheduled rates and not on the daily wages, and therefore, a worker who works on bill basis does not become a daily wager nor the relationship of master and servant is created between him (petitioner) and the employer and therefore, he can not claim any relief under the Industrial Disputes Act. In the present case also, when the petitioner has worked on bill basis there is no question of condonation of fictional breaks as no breaks are given in such cases. In case bill basis work comes to an end thereafter new work is assigned for a specific amount. The petitioner is therefore, not entitled for the relief for condonation of time to time breaks from 2007 to 2020, hence issue no.1 held in negative.

#### Issue No. 2

12. In view of the discussions of issue no.1, it is held that the petitioner has not been not able to prove the relationship of master and servant between him and the department as the petitioner had worked on bill basis and not on daily wage basis, hence this issue is decided against the petitioner and it is held that the petitioner is not entitled for any relief.

#### Issue No. 3

13. In view of findings on issue no.1 the claim petition is very much maintainable as the petitioner has filed the claim petition in support of the reference made by the appropriate Government but it is entirely a different matter that the petitioner has failed to establish the claim, hence issue no.3 is held in favour of the petitioner.

#### Issue No. 4

14. The claim is definitely bad on account of delay and laches as the petitioner has raised the issue after 13 years fully knowing that he was working on bill basis right from the year 2007 to 2020. However the delay and laches has no impact upon the claim of the petitioner for the reasons that petitioner has failed to establish the relationship of master and servant between him (petitioner) and the department, hence this issue is held in negative.

Issue No. 5

15. In view of the discussions of issue no.1 the petitioner has no cause of action hence this issue is held in favour of the respondent. ,

Issue No. 6

16. The respondent has not led any evidence on this issue and there is nothing on the record which would estop the petitioner from filing of claim, hence, this issue is held against the respondent.

Issue No.7

17. The respondent has not brought any specific fact before the court which the petitioner has suppressed and concealed from the court. Infact the petitioner has himself pleaded that he was worked on bill basis, hence issue no.7 is held against the respondent.

RELIEF

18. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 4th day of August, 2023.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 51/2019  
Date of Institution : 23-05-2019  
Date of Decision : 05-08-2023

Shri Ram Kishore s/o Shri Chuni Lal, r/o Village & P.O. Sansarpur Terrace, Tehsil Jaswan,  
District Kangra, H.P. *Petitioner.*

*Versus*

The Managing Director, M/S Terrace Pharmaceuticals (P) Ltd., Lot No.3 B(A), Phase-III,  
Industrial Area, Sansarpur Terrace, District Kangra, H.P. *Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Shri Vishal Awasthi, Ld. Adv.

For the Respondent : Shri Anubhav Walia, Ld. Adv.  
AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the termination of the services of Shri Ram Kishore s/o Shri Chuni Lal, r/o Village and Post Office Sansarpur Terrace, Tehsil Jaswan, District Kangra, H.P. by the Managing Director, M/s Terrace Pharmaceuticals (P) Ltd., Lot No.-3 B(A), Phase-III, Industrial Area, Sansarpur Terrace, District Kangra, H.P. w.e.f. 03.06.2018 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as made out from the claim petition is that he was engaged as Machine Operator by the respondent w.e.f. January, 2007 and he worked continuously in the aforesaid capacity till 03.06.2018 when his services were orally terminated as he was not permitted to enter the unit in the morning of 4.6.2018. Work and conduct of the petitioner was thoroughly satisfactory and there was no complaint against him. Neither any show cause notice was served upon him nor he was served with a charge sheet before taking such as action against him. Neither any retrenchment compensation was paid to him nor notice as required under Section 25-F of the Industrial Disputes Act was served upon him, and therefore, violation of under Section 25-F of the Act took place. The respondent is said to have retained the workmen junior to the petitioner and in this manner violation of under Section 25-G of the Act has also taken place. It is submitted that the petitioner was now unemployed and had no source of income. It is submitted that the respondent has violated the provisions of Section 25-F, 25-G and 25-H of the Act and therefore, the petitioner was entitled for the relief of reinstatement with back wages and continuity in service and seniority.

3. The respondent has resisted and contested the petition on the ground that the claim was not maintainable as the petitioner has received full and final settlement amount and he has left the company. The services of the petitioner are said to have been terminated for the reason that he has caused damaged to the tune of Rs. 5 lakh to blister machine and his work was not satisfactory. A notice was served upon him but he has not replied to the same, hence, his services were terminated for unsatisfactory work and provision contained under Section 25-F was not applicable in this case. The petitioner is said to have left the job after full and final settlement of his account, and he therefore, is not entitled for any relief. The work of the petitioner was not up to the mark and he was given dead line to improve his work, but he did not improve the same. It is pleaded that since the petitioner has caused damage to the blister machine and when recovery of Rs. 5 lakh was to be effected from him, he voluntarily left the job after settling his account. Other allegations are denied and it is submitted that the petitioner had since left the job at his own after receipt of notice, therefore, neither any violation of labour laws took place by the respondent nor the petitioner was entitled any relief.

4. The petitioner has filed rejoinder and re-affirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties, following issues have been framed for determination on 27.09.2021:—

1. Whether termination of services of petitioner by the respondent w.e.f. 03-06-2018 is/was illegal and unjustified, as alleged ?
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the respondent? . .*OPP.*
3. Whether the claim petition is not maintainable? . .*OPR.*
4. Whether the claim petition is bad for non-joinder of necessary parties i.e. State of H.P., as alleged. If so, its effect ? . .*OPR.*
5. Whether the petitioner has not approached this Court with clean hands and has suppressed material facts, as alleged. If so, its effects? . .*OPR.*
6. Whether the petitioner is estopped to file claim statement due to his act, conduct and acquiescence, as alleged? . .*OPR.*
7. Relief

6. I have heard learned counsel for the petitioner as well as learned counsel for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, my findings on the aforesaid issues are as under:-

Issue No.1	: Yes
Issue No. 2	: Yes
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief	: Petition is <b>partly allowed</b> per operative portion of the Award.

#### REASONS FOR FINDINGS

##### Issue No.1

8. The petitioner was engaged in January 2007 and he worked till June 2018. This fact has not been disputed by the respondent in the reply. Para no.1 of the claim has not been denied in the reply at all. When the evidence was led, the petitioner spoke these facts on oath and there is no denial to the same in his cross-examination. The witness examined by the respondent Shri Raj Kumar (RW1) admitted categorically in the very first line of his cross-examination that the petitioner was working as machine operator since the year 2007 and he was paid Rs.21000/- per month. Thus it is fully established that the petitioner was engaged in the year 2007 and worked till June 2018. It is not the case of the respondent that petitioner was in the habit of remaining absent in between and he has not completed 240 minimum working days in each calendar year. Thus

presumption goes that the petitioner has worked for minimum 240 days in each calendar year before his services were terminated.

9. The pleadings and evidence led by the respondent prove that it is not clear in itself on the stand to be taken to contest the petition. The reply contains self contradictory pleas to justify the termination of the services of the petitioner. Firstly, it is pleaded that the services of the petitioner were not retrenched but the same were terminated for the reasons that his services were not satisfactory, and secondly, he has caused damages to the tune of Rs.5 lakh to the respondent by damaging the blister machine. It is also stated that even notice was served upon the petitioner but since he did not reply the same, therefore, this omission on his part amounted to admission of the allegations. Thus on one hand, the respondent has taken the plea that the services of the petitioner were terminated on account of his misconduct and negligence, and on the other hand, it has come with the plea that the petitioner has himself abandoned the work after settling his accounts and his services were never terminated. Such facts are pleaded in para no.8 of the reply and are also clear from the entire reading of the reply. There can either be termination of services for misconduct/negligence or there can be voluntary abandonment of the work after settling the accounts. Both the things can not co-exist. Thus the respondent is confused throughout and is not able to decide as to whether the services of the petitioner were terminated for causing wrongful loss to the company or he had himself left the job after settling the account finally.

10. The respondent has tried to press into action one notice allegedly served upon the petitioner. This notice has been tendered as Ext.RW1/C by Shri Raj Kumar (RW1). The case of the respondent is to the effect that a notice was also served upon the petitioner but it was not replied by him, and, therefore, it was presumed that he has nothing to say and his services were terminated. On the other hand, the case of the petitioner is specific and to the effect that his services were terminated by way of a verbal order as he was not permitted to work when he had reported for the work on 3.6.2018. This is another factual plea which requires adjudication by this court. It is therefore, for this court to examine as to whether any such notice is proved to have been served upon the petitioner or he was taken by surprise on 3.6.2018 when he was asked to not to come to work w.e.f 04.06.2018. The respondent has although tendered the notice Ext.RW1/C on the record yet it is not established that it was served upon the petitioner in the manner as alleged. Rather, it appears that this document has been tailored later on in order to eclipse the verbal orders of the termination of the services of the petitioner. There are various reasons to hold so. The petitioner has appeared as PW1 in the witness box and tendered on record his affidavit Ext.PW1/A wherein he has specifically mentioned that his services were terminated verbally. He was subjected to cross-examination wherein questions regarding this notice were never put to the petitioner. No such notice was shown to him. No evidence to prove that it was received by the petitioner was put to him. Had this notice been served upon the petitioner there should have been cross-examination to this effect upon him so that his reaction could be noticed and appreciated by the court to find the truth. Not even a single suggestion regarding this notice was given to the petitioner and the statement made by him in his cross-examination-in-chief to the effect that his services were terminated by way of verbal orders remained unrebutted and unchallenged. When the respondent was asked to prove its case, Shri Raj Kumar (RW1) tendered the notice on the record as Ext.RW1/C. This notice shows that it was issued on 30.4.2018. As per the contents of this notice, the petitioner was informed that 02.6.2018 will be his last working day and this notice be treated as one month's advance notice for termination of his services for the reasons that he has damaged the blister machine and caused loss of Rs.5 lakh to the company. This notice has not been received by the petitioner as there are no signatures made by him in lieu of the receipt of the same on this document. When Shri Raj Kumar was cross-examined regarding this notice he tried to make out a case that it was sent by ordinary post to the petitioner. He further stated that he had not brought any diary and dispatch record of the company to satisfy the court that this letter was actually sent. This explanation by Shri Raj Kumar is false on the face of it and can not be relied for the reason that

the petitioner was very much working with the respondent on 30.4.2018. When the petitioner was very much working with the respondent on 30.4.2018 there was no need to send this notice through ordinary post at his home address. When he was employee of the respondent and attending his duties till 01.6.2018 the notice could have tendered to him at any time in the company campus itself. Had he refused to receive the notice only then it was liable to be sent through registered post. The explanation of Shri Raj Kumar that it was sent by ordinary post can not be believed. He has intentionally stated about the fact that this letter was sent through ordinary post so that he is not asked to produced the postal receipt as ordinary posts are sent without any receipt. When the petitioner was very much working with the respondent and attending the factory everyday there was no reason to send this notice through registered post. The only conclusion that the court can legitimately draw from the aforesaid material as is that this notice was never served upon the petitioner and his services were verbally terminated. When the petitioner approached the labour department with his grievances, this letter dated 30.4.2018 was prepared and used in evidence. Had any such letter been actually served upon the petitioner, better evidence should have been led and there was absolutely no reason to send the same on his address through ordinary post. It is therefore, held that no notice was ever served upon the petitioner but this notice was prepared at the later stage in order to justify the gaps. The case of the petitioner is rather established to the effect that his services were terminated by verbal orders.

11. Even if the case of the respondent is believed for while that the services of the petitioner were terminated for causing wrongful loss to the company, even then, no domestic inquiry was conducted into the allegations. No show cause notice is proved to have been served upon the petitioner. The Inquiry Officer should have been appointed and inquiry into alleged negligence and misconduct should have been conducted so that appropriate penalty can be imposed upon the petitioner. Had the petitioner caused wrongful loss to the tune of Rs.5 Lakh to the company, the same would have also recovered from him. In case, the petitioner has caused wrongful loss of Rs.5 Lakh to the respondent there was no reason to pay him Rs.21700/- by way of alleged full and final settlement deed Ex. DA. The case of the respondent, therefore, is not factually correct, and it is not established that the petitioner has remained negligent as no inquiry was made in the allegations before imposing any penalty.

12. It is settled law by now that in case the domestic inquiry has not been conducted by the employer into the allegations of misconduct or negligence then the employer is not without any remedy. Such employer can lead cogent and convincing evidence regarding the misconduct before the court in the claim petition filed by the employee for his reinstatement. In case, such evidence is led then the respondent can justify the termination orders. In case the court holds the misconduct as established from the evidence led by the employer, it can proceed further and examine the next question as to whether the penalty imposed by the employer is proportionate to the misconduct established or not. Thus the respondent in this case could have led oral and documentary evidence before this court to prove the misconduct.

13. It may be stated here that no cogent evidence regarding the misconduct and negligence on the part of the petitioner has been led on the record. Bald allegations to the effect that the petitioner has caused wrongful loss to the respondent by causing damage to the blister machine to the tune of Rs.5 lakh have been levelled. In case, the machine was damaged by the petitioner, it must have been got repaired thereafter. No mechanic has been examined on the record to depose about the fact that he has found fault in the machine which could have occurred due to the negligence on the part of the operator. No documents like invoice of the repair or the letter to any company to repair the machine has been placed before this court to prove that the respondent company had infact got the machine repaired. Since, it is a costly machine, it can not be repaired without any correspondence with repairing agency. No letter ever written to any repairing agency has been placed on the record. The pleadings are to the effect that petitioner has caused damage to

the machine to the tune of Rs.5 lakh, but altogether contrary evidence has been led. When Shri Raj Kumar appeared as RW1 in the witness box he came with a different plea to the effect that it was infact the consignment that was damaged and wasted in the machine. Thus the respondent is not clear in itself as to how the loss was caused to it by the petitioner. No documents have been placed on the record to prove that acts of non performance of petitioner. No warning letters have been tendered on the record to show that the petitioner was reminded time and again about the fact that his work was not satisfactory and it needed improvements. When no such material has been placed on the record, the respondent has failed to prove the misconduct or negligence on the part of the petitioner even after the respondent was given opportunity to prove the misconduct and negligence in this court by leading evidence.

14. Returning to second plea raised by the respondent that the petitioner has abandoned the service after receiving his full and final payment, it may be stated here that this plea is also not established. No doubt a document showing full and final payment allegedly signed by the petitioner on 2.6.2018 has been placed on the record, yet no satisfactory evidence to this effect that the petitioner has settled the account fully with the respondent has been led by the respondent which the court could have conveniently relied upon.

15. Ext. DA, a document said to be full and final settlement was put to the petitioner in his cross-examination and he has though admitted his signatures on the same, but explained that it was with regard to his salary for the month of May and two days of June. This fact is also mentioned on the reverse of this document that it was pertaining to the salary for the month of May and two days of June. It can not be termed as full and final settlement as such settlement includes several other dues. No witness has been examined by the respondent who could prove this document and explain as to how it was treated and agreed as full and final settlement document. Another document Mark-D1 was put to the petitioner which has specifically denied by him except admitting his signatures on the same. This is a format showing all dues have been paid to the petitioner and nothing was due. This document shows that a sum of Rs.21100/- was paid to the petitioner, whereas Ext. DA, shows that a sum of Rs.21700/- was paid to the petitioner. Both these documents do not tally with each other and Mark-D1 even does not mention the date. No witness, who prepared this document and had dialogue with the petitioner regarding full and final payment has been examined before the court. This document can be said as payment of his pending wages and it is not full and final settlement. Otherwise also, in case the petitioner receives his pending salary, he can not be estopped from challenging the action of the respondent in terminating his services. The petitioner has even applied for his gratuity and the order was passed by the authorized officer as Ext.PW1/C. In this order also, the reference has come with the services of the petitioner were terminated. There is nothing in this document also show that the petitioner has himself left the services. It is also settled law that in case the person receives his gratuity or an any other amount from the employer, he is not precluded from challenging the action of the illegal termination. Thus claim petition is also maintainable.

16. Thus for the aforesaid detailed discussion it is held that the respondent has failed to prove the misconduct and negligence on the part of the petitioner. The respondent has also failed to prove that petitioner has caused wrongful loss to the tune of Rs.5 lakh to the respondent by damaging the aforesaid machine. The respondent has come with different stands at different stages. On the one hand, it is said that machine was damaged, and on the other hand, it is said that the material in the machine was contaminated by mixing the pigeons poops in the consignment in the machine. When all these facts are not established, the penalty of termination of the services of the petitioner can not withstand judicial scrutiny and the act of termination of the services of the petitioner for this reason is bad in the eyes of law. So far as the plea of abandonment of the services of the petitioner is concerned, it has also been failed and the respondent is not able to get any benefit out of the same. Therefore it is held that the services of the petitioner were illegally



terminated by the respondent without proof of the plea of negligence and misconduct which is not even established during these proceedings and termination of the services of the petitioner is bad. Issue no.1 is held accordingly.

#### Issue No. 3

17. The petition is maintainable, as it has been filed in support of the reference, hence issues no.3 is held in negative.

#### Issues No. 4 and 5

18. No necessary parties has been pointed in the evidence of the respondent without whom the claim not have proceeded further. In the absence of any evidence on this aspect, issue no.4 is held against the respondent and petitioner is proved to have approached the court with clean hands and nothing has come to the notice of the court which the petitioner has concealed, hence issues no.4 and 5 are held against the respondent.

#### Issue No. 6

19. There is nothing on the record to estop the petitioner from filing of claim, hence this issue is also held against the respondent.

#### Issue No.2

20. In view of detailed findings on the issue no.1 it is held that the services of the petitioner were wrongly terminated on the ground of negligence and misconduct and since the misconduct and negligence on his part is not established he is held entitled for the relief of reinstatement. Even it is come in the statement of Shri Raj Kumar (RW1) that the workmen junior to the petitioner have been retained and therefore the petitioner is also liable for the relief of reinstatement with seniority and continuity. Since the petitioner has remained out of work on account of the act of the respondent therefore petitioner is entitled to receive a sum of Rs.1,00,000/- as back wages in round figure without computing the actual and total back wages. This issue is held in favour of the petitioner.

#### RELIEF

21. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of his termination. The petitioner is also held entitled for Rs.1,00,000/- (One Lakh Only) as consolidated amount towards back wages, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 5th day of August, 2023.

Sd/-  
(HANS RAJ),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 74/2020

Date of Institution : 10-9-2020

Date of Decision : 05-8-2023

Shri Ashwani Kumar s/o Shri Pyar Chand, r/o Village Barsar, P.O. Jia, Tehsil Palampur, District Kangra, H.P. . .*Petitioner.*

Versus

The Project Manager, Prodigy Hydro Power Private Limited, Jia, Tehsil Palampur, District Kangra, H.P. . .*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Respondent already exparte

**AWARD**

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) :—

“Whether the termination of services of Shri Ashwani Kumar s/o Shri Pyar Chand, r/o Village Barsar, P.O. Jia, Tehsil Palampur, District Kangra, H.P. by not giving sufficient opportunity to defend himself by the Project Manager, Prodigy Hydro Power Private Limited, Jia, Tehsil Palampur, District Kangra, H.P., w.e.f. 26-06-2019 on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the workman, without complying with provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect that he was initially engaged as Trainee Field Assistant by the letter dated 10.10.2011 in the monthly salary of Rs. 5000/- and he

remained probation for one year. The petitioner was thereafter confirmed w.e.f. 01.06.2016 against the post of Electrician in the monthly salary of Rs. 7625/-. Show cause notice dated 28.05.2019 was served upon him regarding his absence from duties. The petitioner replied to the show cause notice and explained that he has availed leaves in the month of March, April and May, 2018 for medical treatment and submitted medical certificates and bills to the company. He also disclosed that he had taken permission from the Project Manager and had intimated him time to time regarding his illness and his inability to report to the work. Despite of this, an inquiry was initiated against him in which Sh. R.P. Sharma, Retired Labour Inspector was appointed as inquiry officer and Sh. Rakesh Kumar Badgal as presenting Officer without informing the petitioner. No copy of charge sheet was issued to the petitioner nor list of witness was supplied to him. He was not even placed under suspension nor subsistence allowance was paid to him. Most importantly, he was not permitted to examine the witness examined against him and thus he could not properly defend himself. Principles of natural justice were thus violated and he was dismissed from service by the authority who was not competent to do so. Copy of the inquiry report was not supplied to him, nor he was given opportunity to file appeal before the Appellate Authority as is specified in the standing orders. No compensation was paid to him and no calendar one month advance notice was served upon him. The petitioner raised the demand and after the conciliation proceedings failed, the present reference was made by the appropriate Government to this court. On all these averments, the petitioner has prayed for his reinstatement with all the consequential benefits.

3. The respondent was summoned and initially Sh. Anish Sharma appeared on behalf of the respondent but later on none appeared, hence, the respondent was ordered to be heard *ex parte* and petitioner was directed to file the claim. The petitioner has appeared as PW1 in the witness in support of his claim and tendered documents etc. to prove his case.

4. None has appeared on behalf of the respondent therefore, there is no reply to the allegation and no evidence has also been led by the employer. This Court has, therefore, to appreciate the unrebutted and unchallenged evidence led by the petitioner.

5. The petitioner has appeared as PW1 and tendered his affidavit Ext. PW1/A. He has tendered his appointment letter Ext. PW1/B, confirmation letter Ext. PW1/C, show cause notice Ext. PW1/D, copy of inquiry proceedings Ext. PW1/E and letter of dismissal Ext. PW1/F. He has also tendered on record copy of demand notice Ext. PW1/G.

6. Appointment letter Ext. PW1/B and confirmation letter Ext. PW1/C shows that the petitioner was engaged in October, 2011 but confirmed as Electrician in June, 2016. As per the terms and conditions appended to the confirmation letter Ext. PW1/C habitual absence from work without sanctioned leave shall be treated as misconduct. It is clear from the Clause-13 of this documents, the term 'habitual' has been defined as repetition of a particular act three times within the period of 12 months. As per the allegations, the petitioner had absented himself in the month of March, April to June, July, August and September on different dates. He was, therefore, served a charge sheet for habitual absence from duty. Inquiry Officer and presenting officer were appointed and inquiry took place into the allegations. The petitioner has although alleged that copy of charge sheet was not supplied to him but proceedings dated 12-02-2019 Ext. PW1/E prove that he has received charge sheet and acknowledged this fact under his signature. Thus the petitioner cannot contend that he was not given proper opportunity to defend himself in the absence of the charge sheet. He was even given time to file the reply with regard to the allegations in the charge sheet for 18-2-2019. No such reply has been filed on the record nor there is any order to this effect. The petitioner should have been given an adequate opportunity to file the reply which has not been given in this case, therefore, he was not given proper opportunity to defend himself. It is not mentioned in the order dated 18-02-2019 Ext. PW1/E that the petitioner has refused to file the

reply. Neither time was granted to him to file the reply nor he prayed for the time. Without reply to the charge sheet, the respondent could not have defended himself properly. The list of witnesses have been filed by both the parties and the petitioner cannot contend that list were not filed and exchanged. Most important aspect of this case is that during inquiry when the employer examined 3 witnesses, the petitioner/employee was not given an opportunity to cross-examine them. There is no cross-examination conducted on these witnesses nor it is recorded anywhere that the petitioner was given opportunity to cross-examine the witnesses but he waived off the opportunity. Statement of the petitioner was also recorded and his witnesses were also not cross-examined by the employer nor any such opportunity was granted. It may be stated here that evidence of the witnesses become complete only when it is tested by the effective tool of cross-examination. Unless the witness is cross-examined in inquiry by the parties against whom he has deposed, his statement cannot be relied upon. Cross-examination makes the evidence complete. The opportunity to cross-examine a witness is an effective tool in the hand of the adversary party which can be employed to test the truthfulness and credibility of the witness. In the case in hand, the inquiry officer did not give the petitioner fair opportunity to cross-examine as many as three witnesses examined against him during the inquiry and therefore, principle of natural justice were violated and the petitioner was prevented from defending himself. When inquiry report proved on the record as Ext. PW1/E is carefully gone through it is clear that the statements of all those witnesses were taken against the petitioner to render the findings to the effect that the petitioner was proved to have willfully absented from his duties and such willful absence amounted to misconduct. Thus the petitioner was not given fair opportunity to defend himself during domestic inquiry and the evidence not tested by the effective tools of cross-examination is incomplete and can not be used against the petitioner. Since this evidence was used against the petitioner in order to terminate his services, therefore, great prejudice was caused to him. The report of the Inquiry report, therefore, does not stand the judicial scrutiny and same could not have been relied upon in any manner.

7. It is settled law that when inquiry report fails to withstand the judicial scrutiny, the employer can establish the misconduct on the part of the employee by seeking permission of the Court to lead evidence in the claim/reference itself. The Court is duty bound to grant such opportunity to the employer after the report of domestic inquiry is ignored for the reason that the employee was not afforded sufficient and adequate opportunity to defend himself. The respondent, in this case has not chosen to contest the claim and has not appeared despite of being served. In this situation, no opportunity to lead fresh evidence on the alleged misconduct on the part of the present petitioner can be grant to the employee and the Court, is therefore, left with no other option but to conclude that the penalty of dismissal against the petitioner does not withstand the test of judicial scrutiny as it has been based on the inquiry report in which the petitioner was not given fair and adequate opportunity to defend himself. Since the employer has not chosen to contest the proceeding before this court, therefore, the presumption runs to the effect that the employer was not confident and knew it well that it shall not be able to meet the case of the petitioner, and therefore, the employer chose to not to contest the proceedings at all. When such is the position, the petitioner is entitled to the relief claimed by him.

8. Since the services of the petitioner have been terminated on the basis of the inquiry report which fails to withstand the judicial scrutiny, therefore, the services of the petitioner are liable to be reinstated with continuity and seniority. The petitioner is however, held not entitled to any back wages for the reasons that he has admittedly remained absent for many days and such a misconduct was made subject matter of the inquiry. The claim petition is therefore partly allowed and the respondent is directed to re-instate the services of the petitioner forthwith and give him the benefits of continuity and seniority. The petitioner shall however, be not entitled for back wages.

9. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 5th day of August, 2023.

Sd/-  
(HANS RAJ),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA**

Vidyut Aayog Bhawan, Block No.37, SDA Complex, Kasumpti, Shimla-171009

Tel No. 0177-2621003 & 2627907 Fax.No. 0177-2627162

E-mail: [secy-hperc@hp.gov.in](mailto:secy-hperc@hp.gov.in) Website: <http://www.hperc.org>

**NOTIFICATION**

*Shimla, the 16th March, 2024*

**No. HPERC-B02/1/2022-4298-4308.**—In exercise of the powers vested under the provisions of the Himachal Pradesh Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 as amended from time to time, the HP Electricity Regulatory Commission hereby nominates Er. M.L. Sharma, Chief Engineer (Retd.) as the Independent Member of the Additional Consumer Grievances Redressal Forum (ACGRF) at Operation Circle Dalhousie.

As per the provision of the aforesaid Regulations, the tenure of nomination will be three years from the date the incumbent takes over as such or until he attains the age of 65 years, whichever is earlier.

The salary and allowances shall be payable as per the provisions notified under HPERC (Salary and Allowances of the nominated Independent Members of the Addl. Consumer Grievances Redressal Forum) Order, 2023.

By order of the Commission,

Sd/-  
(CHHAVI NANTA), HAS,  
Secretary.

**ब अदालत सहायक समाहर्ता, द्वितीय श्रेणी, तहसील रे, जिला कांगड़ा (हि0प्र0)**

श्री नाजीर अली पुत्र अब्दुला, निवासी गांव वेली जट्टा, डा0 रियाली, तहसीली फतेहपुर, जिला कांगड़ा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत ग्राम पंचायत रियाली में मृत्यु पंजीकरण करने बारे।

श्री नाजीर अली पुत्र अब्दुला, निवासी गांव वेली जट्टा, डा0 रियाली, तहसीली फतेहपुर, जिला कांगड़ा (हि0प्र0) ने अदालत हजा में एक प्रार्थना-पत्र बाबत पंचायत रियाली के जन्म एवं मृत्यु पंजीकरण अधिनियम 1969 की धारा 13(3) के तहत अपनी माता ईमना का नाम व मृत्यु तिथि दर्ज करने बारे गुजारा है। प्रार्थी ने निवेदन किया है कि उनकी माता की मृत्यु 10-10-2008 को हुई है परन्तु ग्राम पंचायत रियाली के जन्म एवं मृत्यु रजिस्टर में मृत्यु तिथि नियमानुसार समय पर पंजीकृत नहीं करवाई गई है। इसलिए अब ग्राम पंचायत रियाली को मृत्यु पंजीकरण करने के आदेश दिये जाएं।

अतः सर्वसाधारण को इस इशतहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त की माता के नाम व मृत्यु तिथि पंजीकरण करने बारा कोई उजर व एतराज हो तो वह दिनांक 20-03-2024 को प्रातः 10.00 बजे असागतन व वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करे। अन्यथा प्रार्थी की माता का नाम व मृत्यु पंजीकृत करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समागत न होगा।

आज दिनांक 07-03-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / -  
सहायक समाहर्ता, द्वितीय श्रेणी,  
रे, जिला कांगड़ा (हि0प्र0)।

#### ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बैजनाथ, जिला कांगड़ा (हि0प्र0)

पिकी देवी पत्नी श्री पूर्ण चन्द, निवासी गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

पिकी देवी पत्नी श्री पूर्ण चन्द, निवासी गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा हिमाचल प्रदेश ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसकी पुत्री पायल का जन्म दिनांक 15-06-2019 को गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा, हि0 प्र0 में हुआ था परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 23-03-2024 को सुबह 10.00 बजे न्यायालय में असागतन या बकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म के पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई एतराज न सुना जायेगा।

आज दिनांक 23-02-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बैजनाथ, जिला कांगड़ा (हि0 प्र0)

पिंकी देवी पत्नी श्री पूर्ण चन्द, निवासी गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

पिंकी देवी पत्नी श्री पूर्ण चन्द, निवासी गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा हिमाचल प्रदेश ने इस अदालत में प्रार्थना—पत्र गुजारा है कि उसकी पुत्री कोमल का जन्म दिनांक 19-09-2011 को गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा, हि0 प्र0 में हुआ था परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 23-03-2024 को सुबह 10.00 बजे न्यायालय में असालतन या बकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म के पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई एतराज न सुना जायेगा।

आज दिनांक 23-02-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बैजनाथ, जिला कांगड़ा (हि0 प्र0)

पिंकी देवी पत्नी श्री पूर्ण चन्द, निवासी गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

पिंकी देवी पत्नी श्री पूर्ण चन्द, निवासी गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा हिमाचल प्रदेश ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसके पुत्र आदित्य का जन्म दिनांक 02-08-2018 को गांव लाहड़, डाकघर गुनेहड़, तहसील बैजनाथ, जिला कांगड़ा, हि0 प्र0 में हुआ था परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 23-03-2024 को सुबह 10.00 बजे न्यायालय में असालतन या बकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म के पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई एतराज न सुना जायेगा।

आज दिनांक 23-02-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

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**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बैजनाथ, जिला कांगड़ा (हि0 प्र0)**

श्री जनक चन्द सुपुत्र रूखड़ राम, निवासी गांव नगेहड़ वुहली व डाकघर वंडियां, तहसील बैजनाथ, जिला कांगड़ा हिमाचल प्रदेश।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु हि0 प्र0 पंजीकरण अधिनियम, 1969.

श्री जनक चन्द सुपुत्र रूखड़ राम, निवासी गांव नगेहड़ वुहली व डाकघर वंडियां, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश ने इस अदालत में प्रार्थना-पत्र गुजारा है कि कविता देवी का जन्म दिनांक 18-02-1985 को गांव नगेहड़ वुहली, तहसील बैजनाथ, जिला कांगड़ा, हि0 प्र0 में हुआ था परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जाये।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म के पंजीकरण बारे में कोई उजर/एतराज हो तो वह दिनांक 05-04-2024 को सुबह 10.00 बजे असालतन या बकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म के पंजीकरण बारे आदेश दे दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई उजर/एतराज न सुना जायेगा।

आज दिनांक 02-03-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।



**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, बैजनाथ, जिला कांगड़ा (हि0 प्र0)**

Tsewang Dolma daughter of Late Mr. Gangtse, resident of House No. 15, Bir Tibetan Society, Post Office Bir, Tehsil Baijnath, District Kangra, H.P.

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु हि0 प्र0 पंजीकरण अधिनियम, 1969.

Tsewang Dolma daughter of Late Mr. Gangtse, resident of House No. 15, Bir Tibetan Society, Post Office Bir, Tehsil Baijnath, District Kangra, H.P. ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसका जन्म दिनांक 02-02-1964 को गांव बीड़, डाकघर बीड़, तहसील बैजनाथ, जिला कांगड़ा, हि0 प्र0 में हुआ था परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 06-04-2024 को सुबह 10.00 बजे न्यायालय में असालतन या बकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म के पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त किसी भी प्रकार का कोई एतराज न सुना जायेगा।

आज दिनांक 02-03-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसीलदार फतेहपुर,  
जिला कांगड़ा (हि0प्र0)**

श्रीमती ईच्छया देवी पुत्री भीन्दू राम, निवासी गांव व डा0 जखाड़ा, तहसील फतेहपुर, जिला कांगड़ा, (हि0प्र0) प्रार्थिया।

बनाम

आम जनता

फरीकदोयम।

प्रार्थना-पत्र जेर धारा 13(3) जन्म व मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत ग्राम पंचायत जखाड़ा में जन्म पंजीकरण करने बारे।

श्रीमती ईच्छया देवी पुत्री भीन्दू राम, निवासी गांव व डा0 जखाड़ा, तहसील फतेहपुर, जिला कांगड़ा, (हि0प्र0) ने अदालत हजा में एक प्रार्थना-पत्र बाबत ग्राम पंचायत नंगाल के जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13(3) के तहत अपनी जन्म तिथि दर्ज करने बारे गुजारा है। प्रार्थिया ने निवेदन किया है कि उसका जन्म 01-01-1963 को हुआ है परन्तु ग्राम पंचायत जखाड़ा के जन्म एवं मृत्यु रजिस्ट्रर में

जन्म तिथि नियमानुसार समय पर पंजीकृत नहीं करवाई गई है। इसलिए अब ग्राम पंचायत जखाड़ा को जन्म पंजीकरण करने के आदेश दिये जायें।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थिया उक्त के नाम व जन्म तिथि पंजीकरण करने बारा कोई उजर व एतराज हो तो वह दिनांक 20-03-2024 को प्रातः 10.00 बजे असालतन व वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करे। अन्यथा प्रार्थिया का नाम पंजीकृत करने बारे आदेश पारित कर दिए जाएंगे। इसके उपरान्त कोई भी उजर व एतराज काबिले समायत न होगा।

आज दिनांक 07-03-2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—  
सहायक समाहर्ता द्वितीय श्रेणी,  
फतेहपुर, जिला कांगड़ा (हि0प्र0)।

**ब अदालत सहायक समाहर्ता, प्रथम श्रेणी, शाहपुर, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा : नाम दुरुस्ती

पेशी : 21-03-2024

सोमदत पुत्र सीता राम, निवासी नूरपुर, तहसील नूरपुर, जिला कांगड़ा, हि0प्र0।

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37(1) के तहत महाल मंझग्रा व ददरोली में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका व उसके पिता का सही नाम सोमदत पुत्र सीता राम पुत्र शयाम लाल है जबकि महाल मंझग्रा व ददरोली के राजस्व अभिलेख में उक्त नाम क्रमशः सोम प्रकाश पुत्र सीता राम पुत्र शयाम लाल व सोम प्रकाश पुत्र मोती राम पुत्र शयाम लाल दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त महालात में उक्त नाम को सही करके महाल मंझग्रा में सोम प्रकाश उपनाम सोमदत पुत्र सीता राम पुत्र शयाम लाल व महाल ददरोली में सोम प्रकाश उपनाम सोमदत पुत्र मोती राम उपनाम सीता राम पुत्र शयाम लाल से दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 21-03-2024 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 30-01-2024 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—  
सहायक समाहर्ता, प्रथम श्रेणी,  
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

**ब अदालत सहायक समाहर्ता, प्रथम श्रेणी, शाहपुर, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा : नाम दुरुस्ती

पेशी : 23-03-2024

किकू कपूर पुत्र चौसी राम, निवासी चकवन भन्यार, तहसील शाहपुर, जिला कांगड़ा, हि0प्र0।

बनाम

आम जनता

विषय.—दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37(1) के तहत महाल चकवन भन्यार में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम किकू कपूर पुत्र चौसी राम फरनू है जबकि महाल चकवन भन्यार के राजस्व अभिलेख में उक्त नाम किकू राम पुत्र चौसी राम दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त महाल में अपने नाम को सही करके किकू राम उपनाम किकू कपूर पुत्र चौसी राम पुत्र फरनू से दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 23-03-2024 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 06-03-2024 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—  
सहायक समाहर्ता, प्रथम श्रेणी,  
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, शाहपुर, जिला कांगड़ा (हि0प्र0)**

मुकद्दमा : दुरुस्ती जाति।

पेशी : 04-04-2024

इन्दु वाला पत्नी राज कुमार, निवासी चड़ी, तहसील शाहपुर, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.—महाल चड़ी में जाति दुरुस्ती करने बारे प्रार्थना-पत्र।

उपरोक्त मुकद्दमा बारे प्रार्थिया ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसके पूर्वजों की मुताबिक शजरा नशव महाल सामबरा, तहसील भरमौर की मिसल हकीयत बन्दोवस्त में उसकी सही जाति व गोत क्रमशः गद्दी राजपूत व उत्तम है परन्तु चड़ी, मौजा चड़ी, तहसील शाहपुर के राजस्व अभिलेख में उसकी जाति व गोत क्रमशः राजपूत व गोतम का इन्द्राज हो गया है जोकि गलत इन्द्राज है। प्रार्थिया उक्त जाति व गोत को दुरुस्त करके जाति व गोत क्रमशः राजपूत व गोतम के बजाय गद्दी राजपूत व उत्तम से दर्ज करवाना चाहती है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त जाति व गोत की दुरुस्ती बारे किसी को कोई एतराज हो तो वह असालतन या वकालतन इस अदालत में दिनांक 04-04-2024 को दोपहर बाद 2.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिए जाएंगे और बाद में कोई भी उजर या एतराज जेरे समायत न होगा।

आज दिनांक 06-03-2024 को मेरी मोहर व हस्ताक्षर सहित जारी हुआ।

मोहर।

हस्ताक्षरित / —  
सहायक समाहर्ता प्रथम श्रेणी,  
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

### नाम परिवर्तन

मैं, सुरेश कुमार पूर्व सैनिक सर्विस नंबर-13736534H सुपुत्र स्वर्गीय रतन लाल, निवासी मकान नं0 161, डियारा सैक्टर, वार्ड नं0 9, तहसील सदर, जिला बिलासपुर (हि0प्र0) घोषणा करता हूँ कि मेरे आर्मी रिकार्ड में मेरी बेटी का नाम गलती से गिथ (Geeith) दर्ज है जबकि सही नाम पूजा शर्मा (Pooja Sharma) है। सभी नोट करें।

सुरेश कुमार  
सुपुत्र स्वर्गीय रतन लाल  
निवासी मकान नं0 161, डियारा सैक्टर,  
वार्ड नं0 9, तहसील सदर, जिला बिलासपुर (हि0प्र0)

### CHANGE OF NAME

I, Ex POR No. 141867A Sanjeev Bhardwaj s/o Ram Nath Sharma, V.P.O. Samloti, Tehsil Nagrota Bagwan Kangra (H.P.) in Indian Navy record my wife name Meenkashi Bhardwaj wrongly entered. Correct name is Meenakshi Sharma vide Affidavit attested by Executive Magistrate Nagrota Bagwan.

SANJEEV BHARDWAJ  
s/o Ram Nath Sharma,  
V.P.O. Samloti,  
Tehsil Nagrota Bagwan Kangra (H.P.).

### CHANGE OF NAME

I, Prabha Devi d/o Sh. Chain Ram, r/o Village Limbra, Tehsil Chirgaon, District Shimla (H.P.) presently residing at Mehta Niwas, Near Dhingu Mandir, Sanjauli, Shimla (H.P.) declare that I have changed my name from Prabha Devi to Pravrtika Singh, Civil Suit No. 146-1 of 2022 Instituted on 06-09-2022, in the Court of Civil Judge, Court No. 6, Shimla (H.P.) decided on 29-08-2023

PRABHA DEVI  
d/o Sh. Chain Ram,  
r/o Village Limbra,  
Tehsil Chirgaon, District Shimla (H.P.).